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November 14, 2022

Via Hand Delivery and Email

Town of Stow Zoning Board of Appeals
380 Great Road
Stow, MA 01775-2127

**Re: Stow Elderly Housing Corp.
M.G.L. Chapter 40B Comprehensive Permit**

Dear Members of the Zoning Board of Appeals:

Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, on January 30, 2019, the Town of Stow Zoning Board of Appeals (“ZBA”) issued modifications to a comprehensive for "Plantation II," subject to certain conditions contained in the permit decision (“Plantation II Decision on Remand”). Concurrently, the Board issued modifications to a comprehensive permit issued in 1982 for the “Plantation I” development (“Plantation I Decision on Remand” and together with the Plantation II Decision on Remand, the “Decisions on Remand”).

The Applicant, Stow Elderly Housing Corp., requests that the ZBA further modify and combine the Decisions on Remand pursuant to 760 CMR 56.05(11) as requested in this letter and hold public hearings (and provide notice of and advertise such public hearings) to consider the proposed modifications to and the combination of the Decisions on Remand. Separately and contemporaneously, the Applicant is submitted a variance application to the ZBA allowing the House Lot which was previously part of the project pursuant to the Decisions on Remand, to be established as a separate lot.

With this request, the Applicant makes the following additional submissions to the ZBA:

- (1) Ten (10) hard copies of the proposed draft of the combined and modified decision, setting forth all the requested modifications, together with comparisons showing the changes from the Decisions on Remand;
- (2) Ten (10) hard copies of an updated list of exhibits reflecting all the new plans submitted to the ZBA in connection with this request to be incorporated into the full Appendix A to the combined and modified decision;
- (3) Ten (10) hard copies of the new plans referenced on Appendix A;

- (4) Ten (10) hard copies of an updated Appendix B list of waivers, setting forth the updated requested waivers, together with comparisons showing the changes from the Decisions on Remand Appendices; and
- (5) Ten (10) hard copies of an updated Appendix C list of conditions, setting forth the updated requested modifications. Unfortunately, I do not have a word version of the final Appendix C, so I am unable to provide comparisons at this time. I would be happy to provide comparisons in the future if we are able to locate the final Appendix C in a word version.

Requested Modifications:

Please note that all requested modifications are reflected in the proposed draft combined and modified decision and updated appendices.

If you have any questions about this request or need additional information, please do not hesitate to contact me directly or Nina Schwarzschild at 617-945-3222.

Sincerely,



Rita M. Schwantes
617-224-0620 (direct)
rschwantes@kleinhornig.com

Enclosures

cc: Valerie Oorthuys, Planning Director (via email)
Vicki Blake (via email)
Nina Schwarzschild (via email)
Peter Munkenbeck (via email)
Amy E. Kwesell, Esq., Town Counsel (via email)
Dennis Murphy, Esq. (via email)

**COMBINED AND REVISED PLANTATION I AND II DECISION
TOWN OF STOW**

ZONING BOARD OF APPEALS

Decision on Application for Modification of Revised Comprehensive Permit
"Plantation I" and "Plantation II"

- Applicant:** Stow Elderly Housing Corp.
22 Johnston Way, Stow, MA 01775
- Owner:** Historically the owner was proposed to be Plantation II Apartments LLC and Plantation Apartments Limited Partnership (address identified on application: "c/o Stow Elderly Housing Corporation, 22 Johnston Way, Stow, MA 01775").
- The owner will now be Applicant with a ground lease to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits.
- Locus:** Historically the locus was 252 Great Road, 22 Johnston Way and property off Great Road
Assessor's Map U-11, Parcel 10
Assessor's Map U-11, Parcel 13-1
Assessor's Map R-22, Parcel 1A-B
- The locus is now referred to as 18 and 22 Johnston Way and includes additional land acquired by the Applicant to serve as part of the well protection area. The current assessor's map references are:
- Assessor's Map U-11, Parcel 10A-A1 (former Parcel A and Parcel A1)
Assessor's Map U-11, Parcel 13-1B3 (former Parcel B3 and Parcel B1)
Assessor's Map R-22, Parcel 1B-2 (former Parcel B2)
Assessor's Map U-11, Parcel 16 (additional land)
Assessor's Map U-10, Parcel 42 (Access Easement serving former Parcels B1 and B2)
- Sitting:** [To be updated: Mark Jones, Chairman, William Byron, Ernest Dodd, Andrew DeMore, Leonard Golder]
- Public Hearing Dates: original** September 11, 2017, October 16, 2017, November 13, 2017, December 4, 2017, January 29, 2018, March 5, 2018, April 2, 2018, April 30, 2018, June 4, 2018, June 11, 2018, July 16, 2018, August 27, 2018, October 22, 2018, November 8, 2018, November 20, 2018, and December 6, 2018.

Public Hearing May 18, 2020; June 4, 2020; June 18, 2020; June 19, 2020
Dates: on remand

Public Hearing
Dates: Re Modification

On August 10, 2017, the Stow Elderly Housing Corporation (SEHC or Applicant) submitted an application for a comprehensive permit for a project known as "Plantation II." Public hearing opened on September 11, 2017, and was continued to the dates above. Pursuant to extensions granted by the Applicant, hearing closed on December 6, 2018. The Board deliberated on December 17, December 27, 2018, January 3, 2019, and January 9, 2019. Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, the Zoning Board of Appeals voted to grant the application for a comprehensive permit for "Plantation II," subject to certain conditions contained in the permit decision ("Plantation II decision"). Concurrently, the Board granted modifications to a comprehensive permit issued in 1982 for the "Plantation I" development ("Plantation I modification"). The two decisions were filed with the Town Clerk on January 11, 2019.

On January 30, 2019, the Applicant appealed the Board's Plantation I modification and Plantation II Decision to the Housing Appeals Committee. In these appeals, the Applicant sought removal of certain conditions in the Plantation II Decision alleged to render the project "uneconomic"; to impose local requirements and regulations unequally to subsidized housing; and to be "inconsistent with local needs." The Applicant sought further amendments to the Plantation II decision to address inconsistencies between such decision and the Plantation I modification. By joint request, both appeals were remanded by the Housing Appeals Committee to the Board for public hearing on certain proposed modifications to the Plantation II project. The Applicant submitted revised plans, a narrative describing modifications requested, and other materials ("Remand Application" on March 12, 2020)

Public hearing on the Remand Application (Plantation I and II) opened on May 18, 2020, and closed on June 19, 2020. Following deliberations, the Board voted to grant the requested modifications to the project, and to issue new decisions for both Plantation I and Plantation II (together, the "Decisions on Remand" and each the "Plantation I Decision on Remand" and "Plantation II Decision on Remand."). These new decisions incorporated the changes approved by the Board, and correct certain minor inconsistencies between the Plantation II decision and Plantation I modification. These new decisions superseded the Plantation II decision and Plantation I modification issued on January 30, 2019.

On November 14, 2022, the Applicant submitted an application for modification to combine the two Decisions on Remand with revised plans and a narrative describing the modifications requested and other materials (the "Modification Application"). With the passage of time and input from the abutters as well as the Massachusetts Department of Environmental Protection in connection with permitting applications for the wastewater treatment facility and new wells, the Applicant has concluded both that it is able to and that it is desirable to conduct the construction of the Plantation II development and the rehabilitation of the Plantation I project

simultaneously under a single Combined and Revised Plantation I and Plantation II Decision of the Board. In brief, the Applicant proposes the following changes to the project since approved pursuant to the two Decisions on Remand:

1. Relocation of the wastewater treatment leach field, to a location further from the property lines with the property abutters;
2. Replacement the Plantation I water supply with new wells which will be permitted by DEP and service both Plantation I and Plantation II;
3. Addition of 14,301 sq. ft. of additional land from former Assessor's Map U-11, Parcel 16 and reconfiguration of the parcels to reintroduce the separation of the House Lot from the projects and otherwise have all the land of Plantation I and Plantation II be owned by the Applicant with ground leased to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits.
4. Changes to infrastructure for fire fighting equipment based on requirements of the Stow Fire Department;
5. Various upgrades to the Plantation I grounds and buildings not previously contemplated as listed below. The existing tenants of Plantation I shall continue to occupy their units uninterrupted while these updates are in process:
 - a. Combining water supply with Plantation II;
 - b. Upgrading HVAC systems;
 - c. Replacing siding with visually consistent siding;
 - d. Installing a new roof;
 - e. Replacing windows and lighting;
 - f. Replacing sliding glass doors with single doors with fixed sidelights;
 - g. Adding a new sidewalk for residents;
 - h. Adding electric vehicle charging stations; and
 - i. Repairing pavement and adding 7 parking spaces.

Public hearing on the Modification Application (Plantation I and II) opened on [_____], and closed on [_____]. Following deliberations, the Board voted to **[Grant/Deny]** the requested modifications to the project, and to issue a single new combined decision for both Plantation I and Plantation II. This new decision incorporates the changes approved by the Board. This new decision supersedes the Plantation II decision and Plantation I modification issued on [_____].]

I. History of Plantation I and Plantation II and Summary of Proposed Project, including Application on Remand and Application for Modification

Pursuant to a comprehensive permit granted by the Board in 1982, SEHC developed the original Plantation project, now referred to as "Plantation I", containing fifty affordable apartments for the elderly on parcels off of Great Road. In 2010, the Board granted a second comprehensive permit for "Plantation II", containing thirty-seven additional affordable units for the elderly, to be located on property adjacent to Plantation I. Pursuant to G.L. c. 40B, ss 20-23, the Board waived certain local regulations for the Plantation II project, including a provision of

the Zoning Bylaw limiting the discharge of onsite sewage disposal within the Water Resource Protection District (WRPD). As then designed, both the Plantation II project building and its wastewater disposal system were located within the WRPD.

Appeal was taken under G.L. c. 40, s. 21 and G.L. c. 40A, s. 17 to Middlesex Superior Court by an abutter to the project site. The Superior Court found that the project's wastewater discharge would more likely than not cause nitrogen levels to exceed acceptable levels at neighboring wells, but nevertheless found the project's compliance with state requirements to be sufficient, and upheld the comprehensive permit. In a decision dated September 15, 2015, the Appeals Court reversed, finding that state standards were insufficient to protect neighboring wells; that it was "unreasonable to conclude that the need for affordable housing outweighs the health concerns of existing abutters"; and unreasonable to waive the WRPD Bylaw provision limiting the discharge of wastewater within the District. The Appeals Court directed revocation of the comprehensive permit.

On or about August 14, 2017, SEHC submitted a revised application to Board for Plantation II. The original project proposal consisted of thirty-seven affordable one-bedroom rental apartments for the elderly, together with related facilities, and the refurbishment of an existing single-family dwelling, on properties off Great Road. The proposal entailed the reconfiguration of several parcels, owned by related entities¹, such that 1) the single family dwelling would be located on a lot containing approximately 0.46 acres, with frontage on Great Road ("House Lot"); 2) the thirty-seven housing units would be constructed on a second lot to the south of the house lot, containing approximately 3.3 acres ("Project Lot"); and 3) a third lot, the site of a well to serve the project (Well Lot"). In its Plantation II decision, the Board declined to approve this reconfiguration of lots as requested, noting that it was without authority to do so under the Subdivision Control Law. The Plantation II comprehensive permit was issued subject to endorsement by the Planning Board, granting such relief it deemed proper, of a plan depicting the reconfigured lot lines.

In the Remand Application, the Applicant eliminated the creation of a separate "House Lot," maintaining a single "Project Lot" to include both the existing single family house and the thirty-seven housing unit development, for a total of thirty-eight units. The Applicant's stated intent with respect to the single family house was to 1) rent it at market rate; or 2) impose a condominium scheme such that the single family house and the Plantation II development will be separate units, with the single family house unit to be sold at market rate.

In the Modification Application, the Applicant has reintroduced the creation of a separate "House Lot" with the existing single family house and proposed that the remaining land of

¹ Plantation Apartments II LLC owns the parcel (Assessor's Map U-11, Parcel 10) that will contain the existing single-family house and the Plantation II project. Plantation Apartments II LLC also owns the parcel (Assessor's Map R-22, Parcel 1A-B) on which Plantation II's well will be located. SEHC owns the land (Assessor's Map U-11, Parcel 13-1) on which Plantation I is located; the project buildings and other improvements are owned by Plantation Apartments Limited Partnership, which has a ground lease with SEHC.

Plantation I and Plantation II be considered a single “Project Lot” with a thirty-seven unit housing development for Plantation II and the existing fifty unit housing development for Plantation I, to be developed, rehabilitated, owned, leased and operated on a combined basis. The Applicant intends that the House Lot shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House Lot.

In the Remand Application, the Applicant submitted an ANR plan entitled “Plan of Land in Stow, Massachusetts, prepared by Ducharme & Dillis dated September 23, 2019,” which was endorsed by the Town of Stow Planning Board on November 5, 2019 and recorded with the Middlesex Registry of Deeds (Southern District) as Plan No. 59 of 2020. This ANR plan redrew certain lot lines to accomplish an intended “land swap” accommodating the location of the Plantation II well and Plantation II project building, but as described above, did not create a separate “house lot.”

In the Modification Application, the Applicant submitted a draft variance plan entitled “Variance Plan in Stow, Massachusetts”, prepared by Dillis & Roy Civil Design Group dated November 1, 2022, Job No. 4644-2-ZBA-2022 (the “Variance Plan”) which the Applicant has simultaneously filed with the Board in connection with an application for a variance allowing the House Lot to be established as a separate lot. If and when the variance is approved by the Board, the Applicant intends to convert the Variance Plan into an Approval Not Required (or ANR) plan and to submit it to the Town of Stow Planning Board for endorsement and recordation with the Middlesex Registry of Deeds (Southern District). The variance plan no longer shows the “land swap,” as the Applicant intends to treat all the land other than the House Lot as a single Project Lot in single ownership by the Applicant.

The new Project Lot has frontage on Great Road. A driveway located on the House Lot will continue to serve the single family house. The Plantation I and II developments will be accessed over Johnston Way, a private way currently serving the existing Plantation I development. Plantation I contains fifty affordable apartments for the elderly constructed under a comprehensive permit issued in 1982 to the Stow Elderly Housing Corporation. It consists of six two-story buildings sited around a cul-de-sac (in which Johnston Way terminates), in the center of the Project parcel. Ownership and configuration of the Project Lot, are discussed further below. The Well Lot is part of the Project Lot located to the west of the Plantation I buildings.

SEHC proposes to rent all thirty-seven Plantation II apartments to low- or moderate - income households.² All fifty apartments of Plantation I shall continue to be rented to low- or moderate- income households. SEHC states that, to the extent consistent with applicable law, "a local preference will be implemented to rent up to 70% of the Elderly Housing units to households meeting local preference guidelines, including a preference for current residents of Plantation I." The Project Eligibility Letter states that the project has been approved under the

² The Project Eligibility Letter issued by DHCD specifies an affordability level of "no more than 60% of area median income" for all thirty-seven rental units.

Low Income Housing Tax Credit (LIHTC) program.³ A Special Town Meeting vote on October 19, 2009 approved the allocation of \$825,000 in Community Preservation Funds for the Plantation II project.

At the time SEHC submitted its original Plantation II application, SEHC also submitted an application for modification of the 1982 Plantation I comprehensive permit, to reflect certain changes to that project arising from the Plantation II development. Modifications to the Plantation I comprehensive permit were contained in a separate decision filed with the Town Clerk on January 11, 2019 (the Plantation I modification). In conjunction with its Remand Application on Plantation II, SEHC submitted requests for changes to the Plantation I modification. Those requests were addressed in the Remand Decisions. In the Modification Application, the Applicant requests that the modifications to the Plantation I comprehensive permit now be replaced and combined with the Plantation II comprehensive permit in this decision.

The issuance of in 2019 of the Plantation II comprehensive permit, as well as the modification of the Plantation I permit, implicated a Covenant entered into by SEHC, for the benefit of the Town recorded in 1982 with the Plantation I permit. This Covenant and its relationship to the Plantation I and Planation II developments were addressed in the Remand Decisions and are again implicated by the revised applications and are discussed below.

II. Record before the Zoning Board of Appeals

The materials identified in **Revised Appendix A** comprise the record before the Board, with the addition of certain materials submitted in the Modification Application.

III. Findings of the Board

A. Findings on "Project Eligibility"

Based on the materials submitted by the Applicant, the Board makes the following findings with respect to the requirements of 760 CMR 56.04(1):

The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization

According to the application originally submitted and confirmed in public hearing following remand, SEHC expected Plantation Apartments II LLC "to ultimately own and operate the Project." However, the Applicant now proposes that SEHC own the Project (including both Plantation I and Plantation II, but excluding the House Lot) and ground lease it to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits. SEHC

³ The original Plantation II application stated that the project is to be constructed under the Department of Housing and Community Development's HOME program and/or DHCD's Housing Stabilization Fund. In public hearing following remand, the Applicant advised that this is still the case.

state that both it and its affiliate ground tenant "will be controlled by (or under common control with [SEHC] and will be a qualified limited dividend organization within the meaning of Massachusetts General Laws Chapter 40B." The Board finds that that the Applicant, SEHC, is qualifying "nonprofit organization" for purposes of 760 CMR 56.04(1)(a).

The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

The Project Eligibility Letter issued by DHCD on August 10, 2017, states that the Plantation II project has been approved under the Low Income Housing Tax Credit (LIHTC) program. Under DHCD regulations, this approval letter is sufficient to establish "fundability" for purposes of 760 CMR 56.04(1)(b); although as noted by the Project Eligibility Letter, it is not a guarantee that LITHC funds will be allocated to this Project.

The Applicant shall control the site.

Although, Plantation Apartments II LLC formerly owned most of the property that will become the Project Lot and the Well Lot, the Applicant (SEHC) owns all of the property for the combined project.

The Board finds that the Applicant controls the site for purposes of 760 CMR 56.04(1)(c).

B. Findings on the need for affordable housing

Based on the application and hearing evidence, the Board made certain findings in the Plantation II decision regarding the need for affordable housing. The Board reiterates those findings here:

1. The Board finds that there is a critical, unmet need for affordable housing in the Town of Stow. Approximately 20% of households in Stow meet the income eligibility requirements for affordable housing.
2. The Board finds that the need for affordable units for the elderly is particularly acute.
3. The Board finds that Plantation I development is rented to capacity, and that there is a lengthy waiting list for apartments.
4. The Board finds that the need for affordable units for the elderly has increased substantially since the permitting and construction of the Plantation I development.
5. The Board finds that the production of additional units of affordable elderly housing was identified as a priority in the Town's most recent Housing Production Plan (HPP). The HPP noted that the need for such housing is set to *further* increase in the coming years as the population of older adults continues to grow. It is expected that by 2030, 29.7% of the population of Stow will be over the age of 65.

6. The Board finds that the Town of Stow has not achieved the 10% threshold identified in G.L. c. 40B, ss. 20. The Town currently has 179 subsidized housing units on the Department of Housing and Community Development's Subsidized Housing Inventory (SHI), or 7.2%

IV. 1982 Covenant

The 1982 comprehensive permit issued to SEHC for Plantation I is linked to a covenant entered into by SEHC with the Town of Stow (by and through its Selectmen) and recorded in the Registry of Deeds along with the comprehensive permit itself. This covenant, entitled "Approval with Covenant Contract," references a Definitive Subdivision Plan dated September 16, 1982 (also recorded); this Plan depicts the original Lot 1, Lot 2 and Parcel C on which Plantation I was permitted and constructed. The Plantation I comprehensive permit, the Covenant, and the Subdivision Plan must be read of a piece, as they are expressly linked, and together represent the conditions under which the Board approved a project deviating from the Town's standards for roadways and access. The Board has reviewed the Plantation I Decision, the Covenant, and the Plan.

The Covenant, in addition to containing terms relating construction and maintenance of the project roadway, states:

- "5. That Lots 1, 2, and C as shown on [the Subdivision] plan shall remain in common ownership and that Lots 1 and 2 as shown on such plan shall be used only in connection with the project described in [the comprehensive permit] Decision.
6. That no buildings shall be constructed on said lots except as provided for in said Decision and the plans."

By its terms, the Covenant is binding on the Stow Elderly Housing Corporation, and any successor with respect to the lots comprising Plantation I and depicted on the Subdivision Plan.

The revised combined Plantation I and Plantation II projects entails the additional development of the subject property. The Board notes that this change is in conflict with terms of the Covenant. The Board further notes that the Plantation I Decision limits construction to a maximum of 50 units; thus the development of an additional thirty-seven units in Plantation II violates the Plantation I comprehensive permit as well as the Covenant.

The Board finds that it does not have the authority to modify or waive the terms of the Covenant, as that agreement was entered into by SEHC and the Town, through the Selectmen. Such authority lies with the Selectmen. The Board finds, however, that it has an obligation to consider the concerns underlying the Covenant, as such concerns are also reflected in the Plantation I comprehensive permit; in particular, its limitation of the project to fifty units.

Given the Covenant terms noted above, as well as Plantation I's limit to 50 units, the Board believes that a chief concern is whether the roadway is adequate to provide safe access for the combined 87 units of Plantation I and II. A second concern is whether a density of 87 units

is appropriate for the site; the 1982 permit and Covenant represent an express finding that it is not.

As discussed below, based on the information presented by the Applicant and the opinion of Town officials, the Board finds that the proposed access over Johnston Way will, with proposed improvements, be adequate to serve the combined Plantation I and II. The Fire Chief has stated that access to the project site will be sufficient; at 20 feet wide, the Fire Safety Code standard is met. As indicated by the Applicant's traffic study, vehicle trips associated with elderly housing are relatively limited and will neither overburden Johnston Way nor cause congestion at the Great Road intersection or neighboring intersections.

The Board further finds that while a limit to fifty units may have been reasonably imposed in 1982, there are valid and pressing grounds for increasing the number of units thirty-five years later. First, as stated above, the need for affordable housing for the elderly has increased substantially since the permitting and construction of the Plantation I development. Plantation I is rented to capacity; there is a lengthy waiting list for apartments; and the production of additional units of affordable elderly housing was identified as a goal in the Town's most recent Housing Plan. The Board further finds that the provision of Town services to elderly residents will be efficiently accomplished by the co-location of Plantation I and Plantation II.

Based on the above, the Board believes it may, subject to the Selectmen's waiver of the 1982 Covenant provisions prohibiting further development of the site, and the Selectmen's execution of a new covenant or covenants, grant a comprehensive permit for the thirty-seven additional units of Plantation II, consistent with the purposes of the 1982 Covenant and Plantation I comprehensive permit. Certain conditions are imposed below so as to ensure such consistency.

V. Reorganization of parcels and Plan endorsement

Historical Background:

The original Plantation II application proposed the redrawing of certain lot lines to create a "house lot" and a "project lot," and further, to incorporate 1.2 acres of the Plantation I parcel into the project lot – part of a land swap in which an equal-sized area owned by the Applicant would be incorporated into the Plantation I development.

The Remand Application for Plantation II application proposed a single "Project Lot" containing the house and the Plantation II project site, but retains the 1.2 acre "land swap" between the Plantation I and Plantation II project."

The original Plantation II application requested the Board's endorsement of plans effectuating the proposed redivision and recombination of parcels. This Board noted in its original Plantation II decision that it does not have the authority to make such endorsement. While the Board may waive Planning Board rules and regulations under G.L. c. 40B - that is, local regulations - it cannot perform any function assigned to the Planning Board under the Subdivision Control Law. The Subdivision Control Law is a separate statutory scheme, outside

G.L. c. 40B. Accordingly, the Board's approval of the Plantation II project was subject to the endorsement by the Planning Board, granting such relief as it deemed proper, of a Plan depicting the proposed reconfiguration of lot lines, such plan also depicting easements over the various parcels for the benefit of Plantation I and Plantation II, to ensure access to all components of the two developments.

While the Applicant's appeal was pending at the Housing Appeals Committee, the Applicant obtained the Planning Board's endorsement of the ANR plan identified above. This ANR plan redrew certain lot lines to accomplish an intended "land swap" accommodating the siting of the Plantation II well, but as discussed, did not create a separate "house lot." As depicted on the ANR plan, a 1.2-acre portion of the Plantation I parcel (A-1) would be combined with the Plantation II Project Lot, and a 1.2-acre portion of the Plantation II Well Lot (Parcel B-1) would be combined with the Plantation I parcel.

Current proposal in Modification Application:

Pursuant to the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant and that the House Lot be separated into a separate lot. In connection with the Modification Application, the Applicant submitted a variance plan to the Board which the Applicant has simultaneously filed with the Board in connection with a separate application for a variance allowing the House Lot to be established as a separate lot. If and when the variance is approved by the Board, the Applicant intends to convert the Variance Plan into an Approval Not Required (or ANR) plan and to submit it to the Town of Stow Planning Board for endorsement and recordation with the Middlesex Registry of Deeds (Southern District). The variance plan no longer shows the "land swap."

VI. Chapter 61B

Historical Background:

As noted in the Plantation II decision, a portion of the Well lot is currently classified and taxed under G.L. c. 61B as Recreational Land. The Applicant's earlier proposed development entailed a "land swap" under which a portion of this Chapter 61B land (shown as "Parcel B2" on the proposed record plan), would have been conveyed and joined to the Plantation I parcel, and a portion of the Plantation I parcel would have been conveyed and joined to the Well lot. The remainder of the Well lot shown as "Parcel B1" on the proposed record plan) was proposed to remain under Chapter 61B.

The Applicant stated that Parcel B1 would contain over five acres after the land swap, and suggested that the property would otherwise continue to be eligible to be classified and taxed as Recreational Land following the swap. Two wells, a pump house, and underground tanks

(fenced) would be located on this parcel, served by a gravel service road from Great Road. ⁴ The Board found that the gravel road should be gated to preclude unauthorized vehicle access.

The Board found that the question of whether the proposed development, as modified, will entail a change in use of the property - and thus whether the property will continue to be eligible to be classified and taxed as Recreational Land - is for the Assessor to determine. Application to the Assessor for such determination was a condition of this Remand Decisions.

With respect to Parcel B2, and its intended conveyance and joining to the Plantation I parcel (and residential use), the Applicant stated that such transfer would constitute a sale for other use (that is, other than Recreational use), triggering the Town's right of first refusal under Chapter 61B. The Applicant noted that this right of first refusal is typically triggered by a notice of intent to sell, accompanied by a purchase and sale agreement representing a "bona fide offer" from a third party. In this case, the intended conveyance of Parcel B2 in this case does not fit the statute's requirements, especially where no purchase and sale agreement will be entered into until after any comprehensive permit is issued. As stated by the Applicant, "the timeline for the Owner to provide a notice of intent to sell to the Town of Stow is not at the present time when no comprehensive permit has yet been granted for the project but instead will be when the terms of the land swap are finalized."

The Board found that the intended conveyance of Parcel B2 would appear to trigger the Town's right of first refusal, and that such right of first refusal will not ripen until such time that the "land swap" is to be executed. Under the Remand Decisions, the owner of Parcel B2 was required to comply with all requirements of G.L. c. 61B. s. 9 with respect to such intended conveyance.

The Remand Decisions were subject to compliance by the Applicant, and all related parties and successors in interest, with all requirements of G.L. c. 61B.

Current proposal in the Modification Application:

As the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant and that the House Lot be separated into a separate lot there will no longer be a "land swap" and the land subject to Chapter 61B land (Parcels B1 and B2, as described above) are and will be in the single ownership of SEHC. As proposed before, the Chapter 61B land will be improved with two wells, a pump house, and underground tanks (fenced) would be located on this parcel, served by a gravel service road from Great Road. The Board continues to find that the gravel road should be gated to preclude unauthorized vehicle access.

The Board continues to find that the question of whether the proposed development, as modified, will entail a change in use of the property - and thus whether the property will continue

⁴ The Town Assessor has advised that the land under the proposed improvements will be removed from Chapter 61B.

to be eligible to be classified and taxed as Recreational Land - is for the Assessor to determine. Application to the Assessor for such determination is a condition of this decision.

As there will no longer be a transfer of the land, the discussion above around the implications of a conveyance under Chapter 61B are not applicable.

This approval otherwise remains subject to compliance by the Applicant, and all related parties and successors in interest, with all requirements of G.L. c. 61B.

VII. Water Resource Protection District

Historical Background:

In the Applicant's original Plantation II proposal in 2010, both the project building and the leaching fields of its Title 5 wastewater disposal system were located within the Water Resource Protection District (WRPD). The Board waived provisions of the Zoning Bylaw prohibiting uses generating the discharge of wastewater exceeding 110 gpd per 10,000 square feet within the WRPD. As noted above, the Board's waiver of the WRPD regulation was the basis for the Appeals Court reversal in the *Reynolds* decision.

Following the *Reynolds* decision, the Applicant's engineers redesigned the project. The application submitted in August of 2017 kept the project building within the WRPD, but moved the leaching fields outside the WRPD boundary. Abutters to the project site continued to express concerns regarding the safety of their wells given the proximity of the leaching fields to their properties. While the Board was vetting these concerns with the Town's Title 5 consultants, the Applicant decided to abandon plans for a Title 5 system serving Plantation II, and instead seek approval from the Department of Environmental Protection (DEP) for a Groundwater Discharge Permit for a facility to handle the combined wastewater flow of Plantation I and Plantation II. The current project design locates such facility outside the WRPD, and the Applicant's engineers assert that discharge from this facility will pose no threat to neighboring wells - in particular, no elevated levels of nitrogen at their property boundaries.

Due to the proximity of the proposed facility to the WRPD and to neighboring properties, the Board continued to be concerned with the safety of the design and whether the WRPD Bylaw provisions might safely be waived. Based on such concerns, the Board requested the opinion of its consultant as to whether, given the proximity of the proposed wastewater treatment facility to the WRPD, the facility poses a threat to health and safety. The response of the Board's consultant included the following opinion:

"The proposed Waste Water Treatment Facility is located outside of the WRPD, does not contain hazardous materials and will have routine inspections/maintenance by a licensed professional with reporting requirements to DEP. The effluent discharged from the Waste Water Treatment Facility will have a greater level of treatment and lower nitrogen levels than if both [Plantation I and II] lots used a Title 5 system similar to the existing system on Plantation Apartments.

The Groundwater Discharge Permit, when issued by DEP, will have strict testing requirements and standards and will typically require testing of monitoring wells. The effluent being discharged from the facility will be monitored for the nitrogen levels set in their permit and DEP has the jurisdiction to enforce these pre-determined levels.

It is the opinion of this office that the use of a properly permitted Waste Water Treatment Facility located outside of the WRPD will not pose a threat to health and safety. The implementation of this treatment facility may actually improve the water quality in the area."

Susan E. Carter, P.E. LEED-AP, Director of Engineering and President, Places, Associates, Inc.

Based on the above advice, the Board found that it may, consistent with its responsibility to protect public health and safety, waive applicable provisions of the WRPD, and approve this project, subject to the Applicant obtaining a Groundwater Discharge Permit for the combined treatment of Plantation I and II, and subject to such permit becoming final.

The Board found that it may be useful to establish a baseline for existing nitrogen levels in the wells serving those properties abutting Assessor's Map U-11, Parcel 10. Accordingly, the Applicant was required pay the costs of testing the well of any abutter to the project site, who so elects, to establish existing nitrogen levels only, prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

Current proposal in Modification Application:

In the Modification Application, the Applicant has proposed, based on input from the abutters as well as the Massachusetts Department of Environmental Protection in connection with permitting applications for the wastewater treatment facility and new wells, to move the leach field an even greater distance away from the WRPOD and the abutter's property lines. Given this increased distance and again relying on the advice of the Board's consultant, the Board finds that it may, consistent with its responsibility to protect public health and safety, waive applicable provisions of the WRPD, and approve this project, subject to the Applicant obtaining a Groundwater Discharge Permit for the combined treatment of Plantation I and II, and subject to such permit becoming final.

The Board finds that it may be useful to establish a baseline for existing nitrogen levels in the wells serving those properties abutting Assessor's Map U-11, Parcel 10A-A1. Accordingly, the Applicant shall pay the costs of testing the well of any abutter to Assessor's Map U-11, Parcel 10A-A1, who so elects, to establish existing nitrogen levels only, prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

VIII Waivers

Massachusetts General Laws c. 40B, §§20-23 empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers are “consistent with local needs” under the statute. The Board understands that reasonable waivers from local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G. L. c. 40B, §§ 20-23.

The Applicant included its August 10, 2017 application to the Board a "List of Exceptions to the Zoning Ordinances and other Local Land Use Requirements." This List was updated several times prior to the Board’s Plantation II decision, in which the Board granted waivers and denied others. As part of the Remand Application, the Applicant submitted a revised list of waivers, and modifications to waivers granted, reflecting proposed project changes. As part of the Modification Application, the Applicant has submitted a further revised list of waivers, and modifications to waivers granted, reflecting proposed project changes.

Under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic." Although the Applicant has not provided documentation to demonstrate that the project would be rendered uneconomic *but for* the specifically requested waivers and exceptions, the Board has reviewed the Applicant's waiver requests and has granted those that are consistent with protection of the general health, safety and welfare. The Board has denied requests that do not appear necessary to construct the Project. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted do not either alone, or in the aggregate, render the project uneconomic.

In the event that the Applicant or the Board determines that the final design of the project necessitates further waivers, the Applicant shall submit a written request for such waiver(s) to the Board. The Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.

The Board’s decision as to each of the waivers and exemptions requested is set forth in **Revised Appendix B, Decision on Waivers**. Revised Appendix B to this Decision supersedes the waiver decisions in Appendix B to the July 21, 2020 Remand Decisions for both Plantation 1 and Plantation 2. The only waivers granted are those expressly approved in Revised Appendix B. If a waiver is not expressly approved in Revised Appendix B, it is denied. All local regulations, other than those expressly waived in Revised Appendix B, are applicable to this project, including regulations for which no waiver was requested. No "plan waiver" is granted.

GRANT OF PERMIT

Subject to the conditions set for hereinafter, the Board grants this comprehensive permit (the “Permit”) to the Applicant for the project proposed. The Board notes that 760 CMR 56.05(8)(d) provides that:

“The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic....”

In reaching this Decision, the Board has endeavored to ensure that the conditions herein do not render the project uneconomic and that the conditions are consistent with local needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

1. The Comprehensive Permit application was based on a Project Eligibility letter issued to the Applicant by DHCD on August 10, 2017. This Permit is conditional upon the execution of one or more Regulatory Agreement(s) (updating the existing Regulatory Agreement for Plantation I if DHCD deems appropriate) for this Permit by DHCD, the Applicant and the Town of Stow, and issuance of Final Approval from DHCD. Issuance of Final Approval and the execution of such Regulatory Agreement(s) is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.
2. The Applicant shall comply with the terms of the Regulatory Agreement(s) and the Project Eligibility letter of August 10, 2017, to the extent applicable, prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit. No building permit shall be granted until the terms and conditions of the Regulatory Agreement(s) and project eligibility letter have been complied with in full, except for those which by their nature are to be complied with during and after construction of the project.
3. The Project shall conform to the following Plans:

A plan prepared by Dillis & Roy Civil Design Group entitled “Site Construction Plan, Plantation Apartments II”, dated August 29, 2022 (consisting of eleven sheets; see Appendix A)

A plan prepared by Dillis & Roy Civil Design Group entitled “Plan of Land in Stow, Massachusetts”, dated October 12, 2022 (consisting of one sheet; see Appendix A)

Plans prepared by The Architectural Team, Inc. and Dillis & Roy Civil Design Group entitled “Plantation Apartments I & II”, dated August 29, 2022 (consisting of twenty-one sheets; see Appendix A) (While building height, exterior elevations and building and wall sections were presented in separate plans before, with the Modification Application, this information is presented in sheets A4.01, A5.01, A5.20 and A5.21 of these plans).

All of the above as further modified to comply with the requirements of this Decision; as well as any changes deemed necessary by the Building Inspector, the Planning Department, or the Board's consultant for compliance with this Decision.

Conditions relating to Project Plans and Erosion Control

Prior to site disturbance, the following additions, changes and corrections shall be incorporated into revised Plan sets for the Project. No site disturbance shall occur until the Building Department and Highway Department, and, where noted, the Planning Department, with the advice of the Board's consultant, has reviewed and approved the Plans for compliance with the following conditions:

4. The Applicant, and all agents thereof, shall comply with all conditions contained in Appendix C to this Decision pertaining to Plan Changes, which Appendix is expressly incorporated into this Decision.
5. The Drainage design shall be updated on the Plans to account for the widening of Johnston Way, which will increase the area of impervious surface at the site and the volume of water discharged. Additional flows shall be pre-treated.
6. Historically the Board required that the Plans shall be amended to include details regarding the proposed paving overlay of Johnston Way, including cross sections to indicate width; details as to any required tree removal; the extent of required grading and provisions to maintain adequate access to Plantation I during construction of road improvements; details and limits of repaving, as well as all sawcuts; and information on the geometry of Johnston Way and detail regarding the connection of Johnston Way to Great Road. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
7. Historically the Board required that Pavement Specifications on sheet C3.1 of the Plans shall be amended to reflect relevant work on the Plantation II site. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
8. Areas for snow storage along Johnston Way shall be defined on the Plans.
9. The Water System Plan shall be amended to include applicable notes and detail regarding installation of the water line in the wetland resource area by directional drilling. In addition, prior to site disturbance, the Applicant shall obtain an Order of Conditions from the Conservation Commission, providing a copy of such OOC to the Planning Department as agent for the Zoning Board of Appeals. With the Modification Application, the Board acknowledges that the Applicant submitted the Order of Conditions dated May 27, 2021 and recorded with the Middlesex County Registry of Deeds (Southern District) in Book 78062, Page 117 together with the Conservation Commission minutes date July 5, 2022 approving a slight change to the plan under the Order of Conditions. This submission satisfies this condition of the Decision. In the event that it proves infeasible or uneconomic to install the water line by directional drilling, the Applicant may obtain an amendment to the OOC by application to the Conservation Commission to proceed with direct installation, including temporary disturbance of the buffer of naturally occurring plant materials required by the Wetland Bylaw to be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet, without further application to the Board, provided that a copy of

the amendment to the OOC shall be provided to the Planning Department as agent for the Board.

10. Historically the Board required that cut sheets for all exterior lighting fixtures utilized shall be reviewed and approved by the Planning Department as agent for the Zoning Board of Appeals. With the Modification Application, the Applicant has submitted updated plans with this information (Landscape plan 2.1). This condition is considered satisfied. The Board continues to require that no substitutions of lighting types are allowed to the fixtures unless found by the Planning Department to have equivalent illuminance specifications. Prior to issuance of the first building permit, confirmation of full cut-off fixtures shall be provided.
11. Historically the Board required that the Lighting Plan shall be amended to reflect structural fixtures. Detail for the exterior light posts shall be added to the Plan, including height. With the Modification Application, the Applicant has submitted updated plans with this information (Landscape plan 2.1). This condition is considered satisfied.
12. Historically the Board required that the Lighting Plan shall be amended to show an adequate level of light at the entrance and plaza areas, provided such increase from 1 foot candle remains in accordance with Section 3.8.1.5 of the Zoning Bylaw. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
13. Historically the Board required that the Record Plan shall be amended to show all properties entailed in the Project, and the owners of all abutting properties shall be labeled. The Plans shall be stamped by a Registered Land Surveyor. With the Modification Application, the Applicant has submitted an updated Record Plan with this information. This condition is considered satisfied.
14. Historically the Board required that the Plans shall be amended to include signage at turnaround areas labeled "no parking," to ensure access by emergency vehicles. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
15. Historically the Board required that the Plans shall indicate compliance with ADA accessibility requirements at the building entrance. Additions to the Plan may include but not be limited to spot elevations for top and bottom of ramps and curbs, and tactile detection strips. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
16. Originally, the Board required that the Plans be amended to contain sufficient detail of the proposed grass paved shoulder along the western side of the building, so as to provide a determination of the shoulder's ability to withstand H-20 loading requirements, and to be maintained and accessible at full width year round. The Board also required that such detail shall be provided to the Fire Department for approval prior to commencement of construction. However, in the course of preparing plans for construction and the

Modification Application, the Applicant received a request from the Fire Department to eliminate the proposed grass paved shoulder. Accordingly, the Project proposal no longer contemplates a grass paved shoulder and this condition is no longer required.

17. The Plan notes shall be modified to provide clarification regarding the conditions of the post development woods area.
18. Discrepancies on page 5 of the drainage report regarding the increase of runoff at analysis point C shall be resolved and resubmitted for review by Planning Department with advice of the Board's consultant. The current report indicates no increase in runoff and refers to table which shows negligible increase in runoff.
19. Seed mixes for erosion control shall be added to the Landscape plan for final review of appropriate species by the Board's consulting engineer.
20. Substantive revisions to the Project or the Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, Applicant desires to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR 56.00 et seq.
21. Where this Decision provides for the submission of plans or other documents to the Building Inspector, the Board, or its agent, a written response shall be provided the Applicant as to whether such plans or other documents are consistent with this Decision within forty-five days of receipt of such plans or other documents.

Regulatory Compliance: State, Federal and Local

22. The Project, and all construction, dwelling units, utilities, drainage, earth removal, and all related improvements of the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.
23. Development of the Plantation II component of the Project shall comply in all respects with the conditions contained in the Project Eligibility approval for the Project issued by DHCD dated August 10, 2017 and any modifications thereto.
24. The Project shall comply with all Town of Stow rules, regulations, and other local bylaws and requirements not expressly waived by this Decision.
25. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Stow Board of Health and the Massachusetts Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, private wells, resource protection, water supply and low impact development best management practices, except as expressly waived in this Decision.

26. Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.
27. The Project shall comply with the Town of Stow Zoning Bylaw in effect at the time of the Application, except as expressly waived in this Decision
28. Stormwater management systems shall meet the Guidelines of the Department of Environmental Protection Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised.
29. The total number of dwelling units in the Project shall be limited to a total of 87 units, including the 50 existing units of Plantation I and the 37 new units in Plantation II; provided, however, that the Applicant may apply to the Board to increase the number of dwelling units if and when public water service becomes available on Great Road at the ends of Johnston Way and DeVincent Drive.

Dwelling Units; Affordability in Perpetuity

30. The Plantation II component of the project shall consist of thirty-seven one-bedroom apartments, a community room, meeting room and management office located in a single three-story building, constructed in conformity with the Plans specified in Condition 3 above. For the avoidance of doubt, the Plantation I component of the project shall continue as built pursuant to the original Plantation I decision, with the additional improvements permitted in this Decision.
31. All thirty-seven apartment units of the Plantation II component of the project shall be affordable, in perpetuity, to individuals and/or families earning no more than 60% of area median income, as calculated pursuant to formulas determined by the U.S. Department of Housing and Urban Development (HUD) or DHCD. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision. All thirty-seven apartments shall be subject to a permanent affordable housing restriction conforming to G.L. c. 184, ss. 31-33 and in a form acceptable to the Town, and recorded in the Registry of Deeds. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision.
32. Said affordable housing restriction, enforceable by the Town of Stow, requiring that the affordable units of the Plantation II component of the Project remain affordable in perpetuity and in a form approved by the Board, shall be recorded senior to any liens on the Project locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. For the avoidance of doubt, the Plantation I

component of the project shall continue with the affordability set forth in the original Plantation I decision with the affordable housing restriction as required by DHCD.

33. None of the apartment units of the Plantation II component of the Project may be rented to anyone other than a qualified tenant as required by this Decision and consistent with the requirements of DHCD and other relevant state agencies governing the rental of below market rate units in a comprehensive permit project. To the extent allowed by law, the units shall be rented to persons meeting requirements for elderly housing or otherwise eligible for such housing. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision with the affordable housing restriction as required by DHCD.
34. Upon the rental of an affordable dwelling, the Applicant or its successors or assigns shall provide written notice to the tenant that the premises are subject to an affordable housing restriction and is subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.

Management Documents – Operating Agreement

The Applicant shall prepare documents in a form that conforms to this Decision and applicable law designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.

35. Historically, the Board required that the Applicant shall prepare an Operating Agreement to be executed by appropriate representatives of the Plantation I and Plantation II projects, to govern the coordinated use, repair, and maintenance of the ways, facilities and infrastructure to be shared by the two developments. Such Operating Agreement shall ensure that the terms and conditions of this Decision and the Plantation I Decision are enforced. The Applicant shall provide a copy of the Operating Agreement, and any updates to the same, to the Planning Department. Note: this Operating Agreement is distinct from the Operation and Maintenance ("O & M") Plan described in Condition 38F below, which shall contain the specific operating and maintenance tasks to be shared by Plantation I and Plantation II pursuant to the Operating Agreement. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.
36. All management documents shall provide that the Town of Stow shall not have any legal or financial responsibility for operation or maintenance of roadways, driveways, parking areas, stormwater management systems, snow plowing, landscaping, trash disposal or pick up, street lighting or other illumination, or other roadway infrastructure within the Project or the locus.

Profitability

37. The separate Plantation I and II components shall be limited to the profit allowed under the applicable Regulatory Agreement (the “allowable profit”).

38. Any profit that is above the allowable profit pursuant to the applicable Regulatory Agreement, shall be returned to the Town of Stow for use by the Town. The profit limitation may be enforced the Town or its agencies, boards or commissions at anytime

39. Conditions Precedent to Commencement of Project

The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until the following conditions are satisfied

A. 1) The Board of Selectmen have waived those provisions contained in the 1982 Covenant, identified above in Section IV, pertaining to additional development of the site; and 2) the Selectmen have executed a new Covenant or Covenants with SEHC with respect to all affected property associated with Plantation I and Plantation II, such Covenant(s) being binding on all successors in interest, and recorded in the Registry of Deeds.

B. The Building Inspector has reviewed and approved the Applicant's building, site and engineering construction drawings (Plans). These plans shall include the location and design (including materials to be used) of all retaining walls to be used within the project. Engineered plans for all retaining walls shall be submitted to and approved by the Building Inspector; boulder retaining walls shall not be used. The Building Inspector, on behalf of the Board shall review the Plans for conformance with this Decision; for compliance with local requirements not waived in the Permit; and with state and federal codes. The Applicant shall designate an Onsite Contractor, who shall demonstrate to the satisfaction of the Building Inspector that these Conditions Precedent have been satisfied, to the extent possible.

C. Site Plans fully compliant with the requirements of Section 4.4 through 4.17 of the Site Plan Rules and Regulations, except as waived in this decision, have been reviewed and approved (without the need for public hearing) by the Planning Department with the advice of the Board's consultant.

D. The Department of Environmental Protection (DEP) has issued a Groundwater Discharge Permit as proposed by the Applicant, serving Plantation II and Plantation I, and such Permit has become final.⁵

⁵ The Applicant had originally proposed a wastewater disposal system serving Plantation II only, to be permitted under Title 5 by the Stow Board of Health. Approximately a year into the Board's review of the project, the Applicant decided to pursue approval by the Department of Environmental Protection of a Groundwater Discharge Permit to serve both Plantation I and II, necessitating plan changes. Should the Applicant, for any reason (including but not limited to failure to obtain a Groundwater Discharge Permit, or invalidation of any such Permit), seek to have the proposed development served by a system permitted under Title 5, the Applicant must apply to the Board for modification of this permit.

E. The Planning Department, with the advice of the Board's consultant, has reviewed and approved a reasonable timeline submitted by the Applicant for commencement of construction and completion of the proposed project (including infrastructure, utilities, and landscaping).

F. The Planning Department, with the advice of the Board's consultant has reviewed and approved an Operations and Maintenance Plan (without the need for public hearing). The Plan shall include, at a minimum, 1) maintenance during and post construction; and 2) perpetual maintenance to the extent required and monitoring of the drainage systems (routine and seasonal); the wastewater treatment facility and related sewage disposal elements; Johnston Way and the access driveway from Johnston Way to the Plantation II site; landscaping installed on the Project Lot; cisterns; and other project infrastructure. The Operations and Maintenance Plan shall bind the Applicant and all subsequent owners. The Applicant shall provide a copy of the Operations and Maintenance Plan, and any updates to it, to the Planning Department.

G. The Planning Department, with the advice of the Board's consultant has reviewed and approved an erosion control plan to be in effect for the duration of site disturbance and project construction (without the need for a public hearing). Such plan shall include measures for extreme weather events. Such plan shall ensure that there is no erosion or sedimentation from the project site onto Johnston Way, Great Road, or abutting properties. The Onsite Contractor shall ensure compliance with the erosion control plan for the duration of site disturbance and project construction.

H. A pre-construction meeting shall be held with Town Staff, the Town's consultant and the on-site contractor to review the construction schedule, coordination with town officials for parking and stockpile of materials, erosion control methodology and construction schedule.

I. The Applicant, Monitoring Agent and DHCD have executed a Monitoring Agreement as provided by DHCD, if applicable.

J. The Applicant, the Town of Stow and DHCD have executed such Regulatory Agreements as required by DHCD, and said Agreements have been recorded at the Middlesex Registry of Deeds. The Regulatory Agreement for the Plantation II component shall provide that all units shall be restricted as affordable in perpetuity to households with less than 60% of the applicable area median income. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision and applicable Regulatory Agreement.

K. Historically the Board required that the owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds all easements necessary to provide sufficient vehicular and pedestrian access to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from Great Road, including but not limited to easements over Johnston Way and over the "Easement Area" depicted on the Plans on the Plantation I property. In

the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

L. Historically the Board required that the owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds all easements necessary for installing and maintaining utilities serving Plantation II, including but not limited to the provision of water service to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from the Well site (Assessor's Map R-22, Parcel 1A-B), and all other easements necessary for the installation and use of utilities serving Plantation II, and for use of the cisterns on Plantation I property. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

M. Historically the Board required that the Applicant has executed and recorded in the Registry of Deeds any easements necessary to provide access to the Plantation I project owner with respect to any shared infrastructure, ways, and other project components. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

N. Historically the Board required that the Applicant has executed and recorded in the Registry of Deeds an easement over Assessor's Map U-10, Parcel 42, granted by the owner of such parcel, for the benefit of the Applicant, providing an access and utility easement for connection to the Pump House. In the Modification Application, the Applicant submitted a copy of this easement as recorded with the Registry of Deeds. This condition is considered satisfied.

O. The adequacy of the proposed well to provide service to the development has been confirmed.

40. Conditions Relating to Construction

A. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust, and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00 AM or on Saturday before 9:00 AM. Construction activities shall cease by 6:00 PM on all days. No construction or activity whatsoever shall take place on Sunday. Interior work may be permitted at the discretion of the Building Inspector where necessary to address unforeseen circumstances.

B. The Applicant shall designate an Onsite Contractor who is responsible for all aspects of site work and project construction for the duration of the project. The name and phone

numbers, including an emergency phone number, shall be provided to the Building Inspector and to the Planning Department as agent for the Board. The Onsite Contractor shall demonstrate to the Building Inspector's satisfaction that Conditions 4-18 have been satisfied.

C. Additional erosion control materials shall be readily available, either on site or adjacent sites) to allow replacement of measures as the project proceeds.

D. The Onsite Contractor shall comply with the approved Erosion Control Plan and develop a strategy for controlling the site in the event an extreme weather event is predicted.

E. Trees along the periphery of the limit of work shall be evaluated and removed if they are likely to sustain damage during construction (cut or filled root zone)

F. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the locus. No stumps or other debris shall be buried on the locus.

G. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations.

Administrative

41. The fees for consultant reviews incurred in the Zoning Board's review of this project application shall be the obligation of the Applicant. No site disturbance shall commence until all past fees are paid in full. The Applicant shall be responsible for fees incurred pursuant to consultant review of all project documents as provided in the Conditions above (including but not limited to review of Operations and Maintenance Plan; Erosion Control Plan; Building and site plans).
42. The existing tenants of Plantation I component shall continue to occupy their units uninterrupted while the work described and permitted in this Decision is in process and nothing herein shall be deemed to invalidate any existing certificates of occupancy for the Plantation I component. Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit for the Plantation II component until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, and all required inspections have been completed by the Fire Department. All cisterns indicated in the project plans, as well as any other improvements required by the Fire Department, shall be installed and operational prior to the grant of any occupancy permit for the Plantation II component.
43. Pursuant to the Project Eligibility letter issued by DHCD, following the issuance of certificates of occupancy, the Applicant shall submit to the Board and to the Stow Board of Selectmen the comprehensive permit project cost certification, which the Applicant anticipates doing on a consolidated basis for both Plantation I and Plantation II components.

Conditions Relating to Johnston Way

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. In lieu of compliance with the provisions of Article 5, the Board imposes the following conditions to ensure public safety and to clarify the obligations of the parties.

44. The owner shall bear and have responsibility and obligation for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.
45. Johnston Way shall not be presented to Town Meeting for acceptance as a public way.
46. Johnston Way shall not service any further developments.

Conditions relating to Erosion Control

The Applicant and all agents thereof shall comply with all conditions contained in Appendix C to this Decision pertaining to Erosion Control.

Additional Conditions

47. Invasive Plants. No plants on the Commonwealth's Department of Agriculture "Invasive Plants" list (see <https://www.mass.gov/service-details/invasive-plants>) may be used in the landscaping or any other area of the proposed project.
48. No obligation accruing to Town. The Town shall at no time be responsible for the maintenance of, or repairs to any part of the project, or to the way(s) and easement areas serving the project; or any infrastructure or utilities associated with the project.
49. Shared responsibility for infrastructure. Historically the Board required that the owner of the Plantation I project and the owner of the Plantation II project shall enter into contractual agreement(s), acceptable in form to Town Counsel and naming the Town of Stow as a beneficiary, whereby each accepts joint and several responsibility and liability for the performance and cost of: the maintenance and snow clearance for the shared portion so Johnston Way; the maintenance of the fire protection water cisterns; compliance with all maintenance and regulatory requirements for the sewer treatment facility shared by the Plantation I project and Plantation II project. Further, the owner of the Plantation I project and the owner of the Plantation II project shall execute and record permanent easements, in forms satisfactory to Town Counsel, consistent with the installation, operation, and maintenance of all utilities as follows: an easement granted by the owners of Plantation I to the owners of Plantation II allowing the installation, operation, and maintenance of water service equipment within and across the Plantation I locus connecting the Plantation II well to the Plantation II project; an easement granted by the owners of Plantation II to the owners of Plantation I allowing the installation,

operation, and maintenance of all elements of the shared wastewater treatment facility location on the Plantation I locus; and easements in Johnston Way allowing Plantation II to improve and use Johnston way for passage to and from the Plantation II project, and for the installation, maintenance, and repair of utilities serving the Plantation II project. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

50. Community Preservation Act. The Applicant shall comply with any conditions associated with the funding provided through allocation(s) by the Town pursuant to the Community Preservation Act, and comply with the funding agreement of such allocation.
51. Lighting. All proposed lighting including freestanding fixtures or those attached to a structure shall comply with Section 3.8.1.5 (Exterior Lighting) of the Zoning Bylaw. Specification cut sheets for each type of fixture shall be provided to the Board or its agent.
52. Lighting. Lighting from the new parking area associated with the development shall be shielded from the Plantation I buildings and from abutters to the project site.
53. Johnston Way safety improvements. To improve pedestrian safety, historically the Board required that a center line shall be installed on Johnston Way and the access way connecting Johnston Way to the Plantation II site. With the Modification Application, the Applicant requested this requirement be waived due to the narrow width of the private drive. The Board has agreed to waive the requirement for a center line. Signage for pedestrians, conforming to Bylaw requirements and otherwise satisfactory to the Building Inspector, shall also be installed.
54. Cisterns. The owner is responsible for the maintenance and repair of all cisterns on the Plantation I and Plantation II sites, including those cisterns currently in existence, and those to be constructed in conjunction with Plantation II. Plans and location of cisterns must be finalized prior to issuance of any Building Permit.
55. Wastewater Treatment Facility. The owner is responsible for operation and maintenance of the wastewater treatment facility to be constructed for service to both the new development and existing development.
56. Other Common Facilities. Historically the Board required that the owners of Plantation I and Plantation II are jointly and severally responsible for maintenance and repairs to all other common facilities and common areas serving both projects, to be constructed in conjunction with this Permit, including but not limited to access roads and driveways, utilities, and signs. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

57. Decommissioning of existing septic system serving Plantation I. Prior to the issuance of any occupancy permit for the Plantation II component of the Project, the Applicant shall provide documentation to the Planning Department as agent for the Board, and to the Stow Board of Health, that the existing septic system has been decommissioned pursuant to the requirements and standards of the Massachusetts Department of Environmental Protection.
58. Reports. The Applicant shall provide to the Board of Health all periodic reports or monitoring reports pertaining to the wastewater treatment facility as deemed necessary by that Board.
59. Soil Testing. Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.
60. Testing of wells The Applicant shall pay the costs of testing the well of any owner of property abutting Assessor's Map U-11, Parcel 10A-A1. who so elects, to establish existing nitrogen levels prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.
61. Inspections. Such reasonable inspections of the project site and construction by the Board's consultant, as needed to implement the terms of this Permit, shall be funded by the Applicant pursuant to s G.L. c 44, s. 53.
62. Agents, successors and assigns. All terms and conditions of this permit shall be binding upon the Applicant and all agents, successors and assigns.

Zoning status of single-family house. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision in any respect.

CONCLUSION

This Permit is granted with conditions. This Decision was approved by the Stow Zoning Board of Appeals at a meeting of the Board on [_____] pursuant to the following vote:

Jones:

Byron:

DeMore:

Dodd:

Golder:

NOTICE OF RIGHTS OF APPEAL

Any person aggrieved by this Decision may file an appeal pursuant to the provisions of General Laws, c. 40A, Section 17. Such appeal must be filed within twenty (20) days of the filing of this decision in the Office of the Town Clerk.

The Applicant has the right to appeal this Decision pursuant to the provisions of General Laws c. 40B, Section 22.

Copies of this Decision and notice thereof must be recorded by the Applicant at the Middlesex South Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must thereafter be filed with the Board of Appeals.

**THIS CONCLUDES THE DECISION OF THE BOARD OF THE APPEALS.
SIGNATURES OF THE BOARD MEMBERS ARE FOUND IMMEDIATELY BELOW.**
STOW ZONING BOARD OF APPEALS

Mark Jones, Chairman

William Byron

Andrew DeMore

Ernest Dodd

Leonard Golder

DATE: _____

COMBINED AND REVISED PLANTATION I AND II DECISION
TOWN OF STOW

ZONING BOARD OF APPEALS

Decision on ~~Remand~~ Application for ~~Modifications to~~ Modification of Revised Comprehensive Permit
"Plantation I" and "Plantation II"

Applicant: Stow Elderly Housing ~~Corporation~~ Corp.
22 Johnston Way, Stow, MA 01775

Owner: ~~Stow Elderly Housing Corporation~~ Historically the owner was proposed to be Plantation II Apartments LLC
and Plantation Apartments
Limited Partnership (address identified on application: "c/o Stow Elderly Housing Corporation, 22 Johnston Way, Stow, MA 01775").

Locus: _____

The owner will now be Applicant with a ground lease to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits.

Locus: Historically the locus was 252 Great Road, 22 Johnston Way and property off Great Road
Assessor's Map U-11, Parcel 10
Assessor's Map U-11, Parcel 13-1
~~also: Assessor's Map U-11, Parcel 10;~~

Assessor's Map R-22, Parcel 1A-B

The locus is now referred to as 18 and 22 Johnston Way and includes additional land acquired by the Applicant to serve as part of the well protection area. The current assessor's map references are:

Assessor's Map U-11, Parcel 10A-A1 (former Parcel A and Parcel A1)
Assessor's Map U-11, Parcel 13-1B3 (former Parcel B3 and Parcel B1)
Assessor's Map R-22, Parcel 1B-2 (former Parcel B2)
Assessor's Map U-11, Parcel 16 (additional land)
Assessor's Map U-10, Parcel 42 (Access Easement serving former Parcels B1 and B2)

Sitting: [To be updated: Mark Jones , Chairman, William Byron, Ernest Dodd, Andrew DeMore, Leonard Golder]

Public Hearing September 11, 2017, October 16, 2017, November 13, 2017, December 4, 2017, January 29, 2018, March 5, 2018, April 2, 2018, April 30, 2018, June 4, 2018, June 11 2018, July 16, 2018, August 27, 2018, October 22, 2018, November 8, 2018, November 20, 2018, and December 6, 2018.

Public Hearing
Dates: on remand May 18, 2020; June 4, 2020; ~~June 11, 2020 (continuation only)~~; June 18, 2020; June 19, 2020
[Dates: on remand](#)

[Public Hearing](#)
[Dates: Re Modification](#)

~~The~~On August 10, 2017, the Stow Elderly Housing Corporation (SEHC or Applicant) developed "Plantation I" on Johnston Way, an elderly housing project containing fifty (50) affordable rental units, under a comprehensive permit granted in 1982.¹On August 10, 2017,² SEHC submitted an application for ~~modifications to the Plantation I~~ comprehensive permit, ~~in conjunction with an application for a separate comprehensive permit to develop "Plantation II,"~~ containing an additional thirty seven units of affordable elderly housing to be located on an adjacent parcel. The modifications sought with respect to the Plantation I comprehensive permit arise from the development of Plantation II, where certain improvements, plan amendments, and a land swap are proposed affecting the Plantation I site and operations [for a project known as "Plantation II."](#)

~~As requested by SEHC, the application for modification of the Plantation I comprehensive permit was heard simultaneously with the application for the Plantation II comprehensive permit.~~Public hearing opened on September 11, 2017, and was continued to the dates above. Pursuant to extensions granted by the Applicant, hearing closed on December 6, 2018. The Board deliberated on December 17, December 27, 2018,³ January 3, 2019,³ and January 9, 2019. Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, the Zoning Board of Appeals voted to grant the ~~requested modifications to the 1982 Plantation I~~ [application for a comprehensive permit for "Plantation II,"](#) subject to ~~the~~[certain](#) conditions ~~below~~[contained](#)

¹The Plantation I comprehensive permit was filed with the Town Clerk on May 5, 1982, and recorded in the Middlesex South Registry of Deeds on September 28, 1982, at Book 14739, Page 11, together with an "Approval with Covenant Contract," (discussed below) recorded at Book 14739, Page 7, which references a Definitive Subdivision Plan dated September 16, 1982 and recorded on September 28, 1982 as Plan Number 930.

²SEHC was issued a comprehensive permit for Plantation II in 2010. That permit was appealed under G.L. c. 40A, s. 17 and G.L. 40B, s. 21, and vacated by the Appeals Court in 2015. SEHC returned to the Board in August 2017. For further discussion, see the separately issued Revised comprehensive permit for Plantation II Decision.

~~in the permit decision (“Plantation I modification). By separate vote II decision”). Concurrently, the Board voted granted modifications to grant a comprehensive permit for Plantation II, and a separate decision issued in 1982 for that the “Plantation I” development. These (“Plantation I modification”).~~ The two decisions were filed with the Town Clerk on January 11, 2019.

On January 30, 2019, the Applicant appealed the Board’s Plantation I modification and Plantation II Decision to the Housing Appeals Committee. In these appeals, the Applicant sought removal of certain conditions in the Plantation II Decision alleged to render the project “uneconomic”; to impose local requirements and regulations unequally to subsidized housing; and to be “inconsistent with local needs.” The Applicant sought further amendments to the Plantation II decision to address inconsistencies between such decision and the Plantation I modification. By joint request, both appeals were remanded by the Housing Appeals Committee to the Board for public hearing on certain proposed modifications to the Plantation II project. The Applicant submitted revised plans, a narrative describing modifications requested, and other materials (“Remand Application”). ~~Most of the requested modifications concern the Plantation II Decision, but certain modifications affect the Plantation I modification as well.~~ on March 12, 2020)

Public hearing on the Remand Application (Plantation I and II) opened on May 18, 2020, and closed on June 19, 2020. Following deliberations, the Board voted to ~~GRANT~~ grant the requested modifications to the project, and to issue new decisions for both Plantation I and Plantation II (together, the “Decisions on Remand” and each the “Plantation I Decision on Remand” and “Plantation II Decision on Remand.”). These new decisions ~~incorporate~~ incorporated the changes approved by the Board, and correct certain minor inconsistencies between the Plantation II decision and Plantation I modification. These new decisions ~~supersede~~ superseded the Plantation II decision and Plantation I modification issued on January 30, 2019.

On November 14, 2022, the Applicant submitted an application for modification to combine the two Decisions on Remand with revised plans and a narrative describing the modifications requested and other materials (the “Modification Application”). With the passage of time and input from the abutters as well as the Massachusetts Department of Environmental Protection in connection with permitting applications for the wastewater treatment facility and new wells, the Applicant has concluded both that it is able to and that it is desirable to conduct the construction of the Plantation II development and the rehabilitation of the Plantation I project simultaneously under a single Combined and Revised Plantation I and Plantation II Decision of the Board. In brief, the Applicant proposes the following changes to the project since approved pursuant to the two Decisions on Remand:

1. Relocation of the wastewater treatment leach field, to a location further from the property lines with the property abutters;
2. Replacement the Plantation I water supply with new wells which will be permitted by DEP and service both Plantation I and Plantation II;
3. Addition of 14,301 sq. ft. of additional land from former Assessor's Map U-11, Parcel 16 and reconfiguration of the parcels to reintroduce the separation of the House Lot from the projects and otherwise have all the land

of Plantation I and Plantation II be owned by the Applicant with ground leased to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits.

4. Changes to infrastructure for fire fighting equipment based on requirements of the Stow Fire Department;
5. Various upgrades to the Plantation I grounds and buildings not previously contemplated as listed below. The existing tenants of Plantation I shall continue to occupy their units uninterrupted while these updates are in process:
 - a. Combining water supply with Plantation II;
 - b. Upgrading HVAC systems;
 - c. Replacing siding with visually consistent siding;
 - d. Installing a new roof;
 - e. Replacing windows and lighting;
 - f. Replacing sliding glass doors with single doors with fixed sidelights;
 - g. Adding a new sidewalk for residents;
 - h. Adding electric vehicle charging stations; and
 - i. Repairing pavement and adding 7 parking spaces.

Public hearing on the Modification Application (Plantation I and II) opened on [_____] , and closed on [_____] . Following deliberations, the Board voted to [Grant/Deny] the requested modifications to the project, and to issue a single new combined decision for both Plantation I and Plantation II. This new decision incorporates the changes approved by the Board. This new decision supersedes the Plantation II decision and Plantation I modification issued on ~~January 30, 2019.~~ [_____] .]

I. Proposed Changes

Easements and Easement Areas; Land Exchange

~~As proposed to the Board in August 2017, the Plantation II project parcel was to be reconfigured so as to create a House Lot (on which a preexisting dwelling is located) and a Project Lot for the Plantation II development. In addition, a "land swap" was to be executed between the Plantation I parcel and the Plantation II project parcels.~~

I. History of Plantation I and Plantation II and Summary of Proposed Project, including Application on Remand and Application for Modification

Pursuant to a comprehensive permit granted by the Board in 1982, SEHC developed the original Plantation project, now referred to as "Plantation I", containing fifty affordable apartments for the elderly on parcels off of Great Road. In 2010, the Board granted a second comprehensive permit for "Plantation II", containing thirty-seven additional affordable units for the elderly, to be located on property adjacent to Plantation I. Pursuant to G.L. c. 40B, ss 20-23, the Board waived certain local regulations for the Plantation II project, including a provision of the Zoning Bylaw limiting the discharge of onsite sewage disposal within the Water Resource

Protection District (WRPD). As then designed, both the Plantation II project building and its wastewater disposal system were located within the WRPD.

Appeal was taken under G.L. c. 40, s. 21 and G.L. c. 40A, s. 17 to Middlesex Superior Court by an abutter to the project site. The Superior Court found that the project's wastewater discharge would more likely than not cause nitrogen levels to exceed acceptable levels at neighboring wells, but nevertheless found the project's compliance with state requirements to be sufficient, and upheld the comprehensive permit. In a decision dated September 15, 2015, the Appeals Court reversed, finding that state standards were insufficient to protect neighboring wells; that it was "unreasonable to conclude that the need for affordable housing outweighs the health concerns of existing abutters"; and unreasonable to waive the WRPD Bylaw provision limiting the discharge of wastewater within the District. The Appeals Court directed revocation of the comprehensive permit.

On or about August 14, 2017, SEHC submitted a revised application to Board for Plantation II. The original project proposal consisted of thirty-seven affordable one-bedroom rental apartments for the elderly, together with related facilities, and the refurbishment of an existing single-family dwelling, on properties off Great Road. The proposal entailed the reconfiguration of several parcels, owned by related entities¹, such that 1) the single family dwelling would be located on a lot containing approximately 0.46 acres, with frontage on Great Road ("House Lot"); 2) the thirty-seven housing units would be constructed on a second lot to the south of the house lot, containing approximately 3.3 acres ("Project Lot"); and 3) a third lot, the site of a well to serve the project (Well Lot"). In its Plantation II decision, the Board declined to approve this reconfiguration of lots as requested, noting that it was without authority to do so under the Subdivision Control Law. The Plantation II comprehensive permit was issued subject to endorsement by the Planning Board, granting such relief it deemed proper, of a plan depicting the reconfigured lot lines.

In the Remand Application, the Applicant ~~has~~ eliminated the creation of a separate "House Lot," maintaining a single ~~Plantation II~~ "Project Lot" to include both the existing single family house and the thirty-seven housing unit development, for a total of thirty-eight units. The Applicant's stated intent with respect to the single family house was to 1) rent it at market rate; or 2) impose a condominium scheme such that the single family house and the Plantation II development will be separate units, with the single family house unit to be sold at market rate.

In the Modification Application, the Applicant has reintroduced the creation of a separate "House Lot" with the existing single family house and proposed that the remaining land ~~swap~~

¹ Plantation Apartments II LLC owns the parcel (Assessor's Map U-11, Parcel 10) that will contain the existing single-family house and the Plantation II project. Plantation Apartments II LLC also owns the parcel (Assessor's Map R-22, Parcel 1A-B) on which Plantation II's well will be located. SEHC owns the land (Assessor's Map U-11, Parcel 13-1) on which Plantation I is located; the project buildings and other improvements are owned by Plantation Apartments Limited Partnership, which has a ground lease with SEHC.

~~between~~ of Plantation I and Plantation II ~~remains a part of the proposal~~ be considered a single "Project Lot" with a thirty-seven unit housing development for Plantation II and the existing fifty unit housing development for Plantation I, to be developed, rehabilitated, owned, leased and operated on a combined basis. The Applicant intends that the House Lot shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House Lot.

In the Remand Application, the Applicant submitted an ANR plan entitled "Plan of Land in Stow, Massachusetts, prepared by Ducharme & Dillis dated September 23, 2019," which was endorsed by the Town of Stow Planning Board on November 5, 2019 and recorded with the Middlesex Registry of Deeds (Southern District) as Plan No. 59 of 2020. This ANR plan redrew certain lot lines to accomplish ~~the an~~ intended "land swap" accommodating the location of the Plantation II well and ~~the~~ Plantation II project building. ~~As depicted on the ANR plan, a 1.2-acre portion of the Plantation I parcel (A-1) is anticipated to be combined with the Plantation II Project Lot, and a 1.2-acre portion of the Plantation II Well Lot (Parcel B-1) is anticipated to be combined with the Plantation I parcel.³ With reference to the Assessor's parcel identifications, the Plantation II project site will be assembled by combining Assessor's Map U-11, Parcel 10 with a 1.2-acre portion of the Plantation I property. In exchange, a comparable portion of land owned by the Plantation II owner (Assessor's Map 22, Parcel 1A-B, located to the west of the Plantation I development and the site of Plantation II's well) will be joined to the Plantation I property, but as described above, did not create a separate "house lot."~~

~~The Plantation II development will access Great Road over Johnston Way and a small strip of the Plantation I property (Assessor's Map U-11, Parcel 13-1), referred to by the Applicant as the "Easement Area" depicted on the Plantation II plans.⁴ Easements for access (including emergency access) and for utilities will be granted by the Plantation I owner to the Plantation II owner over Johnston Way and the Easement Area. The Applicant proposes certain improvements to Johnston Way and the Easement Area, including the widening of Johnston Way; construction of an access driveway over the Easement Area; construction of several parking spaces along this access driveway; installation of stormwater management system elements; and landscaping improvements. Other proposed changes affecting the Plantation I property include the construction of sidewalks connecting Plantation I and Plantation II; installation of utility lines; installation of a sign for Plantation II.~~

~~³ Plantation Apartments II LLC owns the parcel (Assessor's Map U-11, Parcel 10) that will contain the existing single-family house and the Plantation II project. Plantation Apartments II LLC also owns the parcel (Assessor's Map R-22, Parcel 1A-B) on which Plantation II's well will be located. SEHC owns the land (Assessor's Map U-11, Parcel 13-1) on which Plantation I is located; the project buildings and other improvements are owned by Plantation Apartments Limited Partnership, which has a ground lease with SEHC.~~

~~⁴ "Site Construction Plans, Plantation Apartments II," dated May 5, 2017, as revised through November 14, 2018. See Revised Appendix A for further information.~~

Cisterns

~~— A water storage cistern is currently located on the Plantation I property. In connection with the development of Plantation II, the Applicant proposes to install an additional cistern to increase capacity for firefighting purposes, and to update the existing cistern. These cisterns, along with other infrastructure, shall be the subject of an Operating Agreement and an Operations and Maintenance Plan described more fully in Conditions 17 and 28 below and Condition 39(F) of the Revised Plantation II Decision.~~

Wastewater Treatment

~~— As originally proposed, Plantation II was to be served by a Title 5 septic system separate from that serving Plantation I. The Applicant subsequently decided to abandon plans for a Title 5 system for Plantation II, and instead seek approval from the Department of Environmental Protection (DEP) for a Groundwater Discharge Permit for a facility to handle the combined wastewater flow of Plantation I and Plantation II. The wastewater treatment facility will be located on Plantation II property; its service of Plantation I will entail infrastructure located on both properties.~~

~~— These Proposed Changes (~~

In the Modification Application, the Applicant submitted a draft variance plan entitled “Variance Plan in Stow, Massachusetts”, prepared by Dillis & Roy Civil Design Group dated November 1, 2022, Job No. 4644-2-ZBA-2022 (the “Variance Plan”) which the Applicant has simultaneously filed with the Board in connection with an application for a variance allowing the House Lot to be established as a separate lot. If and when the variance is approved by the Board, the Applicant intends to convert the Variance Plan into an Approval Not Required (or ANR) plan and to submit it to the Town of Stow Planning Board for endorsement and recordation with the Middlesex Registry of Deeds (Southern District). The variance plan no longer shows the “land swap,” as the Applicant intends to treat all the land other than the House Lot as a single Project Lot in single ownership by the Applicant.

The new Project Lot has frontage on Great Road. A driveway located on the House Lot will continue to serve the single family house. The Plantation I and II developments will be accessed over Johnston Way, a private way currently serving the existing Plantation I development. Plantation I contains fifty affordable apartments for the elderly constructed under a comprehensive permit issued in 1982 to the Stow Elderly Housing Corporation. It consists of six two-story buildings sited around a cul-de-sac (in which Johnston Way terminates), in the center of the Project parcel. Ownership and configuration of the Project Lot, are discussed further below. The Well Lot is part of the Project Lot located to the west of the Plantation I buildings.

SEHC proposes to rent all thirty-seven Plantation II apartments to low- or moderate-income households.² All fifty apartments of Plantation I shall continue to be rented to low- or

² The Project Eligibility Letter issued by DHCD specifies an affordability level of “no more than 60% of area median income” for all thirty-seven rental units.

moderate- income households. SEHC states that, to the extent consistent with applicable law, "a local preference will be implemented to rent up to 70% of the Elderly Housing units to households meeting local preference guidelines, including a preference for current residents of Plantation I." The Project Eligibility Letter states that the project has been approved under the Low Income Housing Tax Credit (LIHTC) program.³ A Special Town Meeting vote on October 19, 2009 approved the allocation of \$825,000 in Community Preservation Funds for the Plantation II project.

At the time SEHC submitted its original Plantation II application, SEHC also submitted an application for modification of the 1982 Plantation I comprehensive permit, to reflect certain changes to that project arising from the Plantation II development. Modifications to the Plantation I comprehensive permit were contained in a separate decision filed with the Town Clerk on January 11, 2019 (the Plantation I modification). In conjunction with its Remand Application on Plantation II, SEHC submitted requests for changes to the Plantation I modification. Those requests were addressed in the Remand Decisions. In the Modification Application, the Applicant requests that the modifications to the Plantation I comprehensive permit now be replaced and combined with the Plantation II comprehensive permit in this decision.

The issuance of in 2019 of the Plantation II comprehensive permit, as well as the ~~construction modification~~ of the Plantation I ~~implicate~~ permit, implicated a Covenant entered into by SEHC, for the benefit of the Town recorded in 1982 with the Plantation I permit. This Covenant and its relationship to the Plantation I and ~~Plantation~~ Plantation II developments were addressed in the Remand Decisions and are again implicated by the revised applications and are discussed below.

II. Record before the Zoning Board of Appeals

The materials identified in **Revised Appendix A**, ~~as modified by this decision~~ comprise the record before the Board, with the addition of certain materials submitted in the Modification Application.

III. Findings of the Board

A. Findings on "Project Eligibility"

Based on the materials submitted by the Applicant, the Board makes the following findings with respect to the requirements of 760 CMR 56.04(1):

60% of area median income" for all thirty-seven rental units.

³ The original Plantation II application stated that the project is to be constructed under the Department of Housing and Community Development's HOME program and/or DHCD's Housing Stabilization Fund. In public hearing following remand, the Applicant advised that this is still the case.

The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization

According to the application originally submitted and confirmed in public hearing following remand, SEHC expected Plantation Apartments II LLC "to ultimately own and operate the Project." However, the Applicant now proposes that SEHC own the Project (including both Plantation I and Plantation II, but excluding the House Lot) and ground lease it to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits. SEHC state that both it and its affiliate ground tenant "will be controlled by (or under common control with [SEHC] and will be a qualified limited dividend organization within the meaning of Massachusetts General Laws Chapter 40B." The Board finds that that the Applicant, SEHC, is qualifying "nonprofit organization" for purposes of 760 CMR 56.04(1)(a).

The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

The Project Eligibility Letter issued by DHCD on August 10, 2017, states that the Plantation II project has been approved under the Low Income Housing Tax Credit (LIHTC) program. Under DHCD regulations, this approval letter is sufficient to establish "fundability" for purposes of 760 CMR 56.04(1)(b); although as noted by the Project Eligibility Letter, it is not a guarantee that LITHC funds will be allocated to this Project.

The Applicant shall control the site.

Although, Plantation Apartments II LLC formerly owned most of the property that will become the Project Lot and the Well Lot, the Applicant (SEHC) owns all of the property for the combined project.

The Board finds that the Applicant controls the site for purposes of 760 CMR 56.04(1)(c).

B. Findings on the need for affordable housing

Based on the application and hearing evidence, the Board made certain findings in the Plantation II decision regarding the need for affordable housing. The Board reiterates those findings here:

1. The Board finds that there is a critical, unmet need for affordable housing in the Town of Stow. Approximately 20% of households in Stow meet the income eligibility requirements for affordable housing.

2. The Board finds that the need for affordable units for the elderly is particularly acute.

3. The Board finds that Plantation I development is rented to capacity, and that there is a lengthy waiting list for apartments.

4. The Board finds that the need for affordable units for the elderly has increased substantially since the permitting and construction of the Plantation I development.

5. The Board finds that the production of additional units of affordable elderly housing was identified as a priority in the Town's most recent Housing Production Plan (HPP). The HPP noted that the need for such housing is set to further increase in the coming years as the population of older adults continues to grow. It is expected that by 2030, 29.7% of the population of Stow will be over the age of 65.

6. The Board finds that the Town of Stow has not achieved the 10% threshold identified in G.L. c. 40B, ss. 20. The Town currently has 179 subsidized housing units on the Department of Housing and Community Development's Subsidized Housing Inventory (SHI), or 7.2%

IV. 1982 Covenant

The 1982 ~~Plantation I~~ comprehensive permit issued to SEHC for Plantation I is linked to a ~~Covenant~~covenant entered into by SEHC with the Town of Stow (by and through its Selectmen) and recorded in the Registry of Deeds along with the comprehensive permit itself. This covenant, entitled "Approval with Covenant Contract," references a Definitive Subdivision Plan dated September 16, 1982 (also recorded); this Plan depicts the original Lot 1, Lot 2 and Parcel C on which Plantation I was permitted and constructed. The Plantation I comprehensive permit, the Covenant, and the Subdivision Plan must be read of a piece, as they are expressly linked, and together represent the conditions under which the Board approved a project deviating from the Town's standards for roadways and access. The Board has reviewed the Plantation I Decision, the Covenant, and the Plan.

The Covenant, in addition to containing terms relating construction and maintenance of the project roadway, states:

"5. That Lots 1, 2, and C as shown on [the Subdivision] plan shall remain in common ownership and that Lots 1 and 2 as shown on such plan shall be used only in connection with the project described in [the comprehensive permit] Decision.

6. That no buildings shall be constructed on said lots except as provided for in said Decision and the plans."

By its terms, the Covenant is binding on the Stow Elderly Housing Corporation, and any successor with respect to the lots comprising Plantation I and depicted on the Subdivision Plan.

The ~~proposed Plantation II project, and resulting changes to the~~revised combined Plantation I permit and project, entail redrawing the lot lines of the 1982 Subdivision Plan; changes in ownership of the lots depicted; andPlantation II projects entails the additional development of the subject property. The Board notes that ~~each of these changes~~this change is in conflict with terms of the Covenant. The Board further notes that the ~~1982~~ Plantation I Decision

limits construction to a maximum of 50 units; thus the development of an additional thirty-seven units in Plantation II violates the Plantation I comprehensive permit as well as the Covenant.

The Board finds that it does not have the authority to modify or waive the terms of the Covenant, as that agreement was entered into by SEHC and the Town, through the Selectmen. Such authority lies with the Selectmen. The Board finds, however, that it has an obligation to consider the concerns underlying the Covenant, as such concerns are also reflected in the Plantation I comprehensive permit; in particular, its limitation of the project to fifty units.

Given the Covenant terms noted above, as well as Plantation I's limit to 50 units, the Board believes that a chief concern is whether the roadway is adequate to provide safe access for the combined 87 units of Plantation I and II. A second concern is whether a density of 87 units is appropriate for the site; the 1982 permit and Covenant represent an express finding that it is not.

~~Based~~ As discussed below, based on the information presented by the Applicant and the opinion of Town officials, the Board finds that the proposed access over Johnston Way will, with proposed improvements, be adequate to serve the combined Plantation I and II. The Fire Chief has stated that access to the project site will be sufficient; at 20 feet wide, the Fire Safety Code standard is met. As indicated by the Applicant's traffic study, vehicle trips associated with elderly housing are relatively limited and will neither overburden Johnston Way nor cause congestion at the Great Road intersection or neighboring intersections.

The Board further finds that while a limit to fifty units may have been reasonably imposed in 1982, there are valid and pressing grounds for increasing the number of units thirty-five years later. First, as stated above, the need for affordable housing for the elderly has increased substantially since the permitting and construction of the Plantation I development. Plantation I is rented to capacity; there is a lengthy waiting list for apartments; and the production of additional units of affordable elderly housing was identified as a goal in the Town's most recent Housing Plan. The Board further finds that the provision of Town services to elderly residents will be efficiently accomplished by the co-location of Plantation I and Plantation II.

Based on the above, the Board believes it may, subject to the Selectmen's waiver of the 1982 Covenant provisions ~~pertaining to single ownership of site and~~ prohibiting further development of the site, and the Selectmen's execution of a new covenant or covenants, grant a comprehensive permit for the thirty-seven additional units of Plantation II, consistent with the purposes of the 1982 Covenant and Plantation I comprehensive permit. Certain conditions are imposed below ~~and in the Plantation II comprehensive permit~~ so as to ensure such consistency.

IV. Reorganization of parcels and Plan endorsement

Historical Background:

The original Plantation II application proposed the redrawing of certain lot lines to create a "house lot" and a "project lot," and further, to incorporate 1.2 acres of the Plantation I parcel into the ~~Plantation II~~ project lot – part of a land swap in which an equal-sized area owned by the Applicant would be incorporated into the Plantation I development.

The Remand Application for Plantation II application ~~proposes~~proposed a single “Project Lot” containing the house and the Plantation II project site, but retains the 1.2 acre “land swap” between the Plantation I and Plantation II project. "

The original Plantation II application requested the Board's endorsement of plans effectuating the proposed re-division and recombination of parcels. This Board noted in its original Plantation II decision ~~and Plantation I modification~~ that it does not have the authority to make such endorsement. While the Board may waive Planning Board rules and regulations under G.L. c. 40B - that is, local regulations - it cannot perform any function assigned to the Planning Board under the Subdivision Control Law. The Subdivision Control Law is a separate statutory scheme, outside G.L. c. 40B.

Accordingly, the Board’s approval of the Plantation II project ~~(and Plantation I modification, to the extent the Plantation I property was affected)~~ was subject to the endorsement by the Planning Board, granting such relief as it deemed proper, of a Plan depicting the proposed reconfiguration of lot lines, such plan also depicting easements over the various parcels, for the benefit of Plantation I and Plantation II, to ensure access to all components of the two developments.

~~In the Remand Application, While the Applicant submitted an ANR plan entitled “Plan of Land in Stow, Massachusetts, prepared by Ducharme & Dillis dated September 23, 2019,” which’s appeal was endorsed by pending at the Town of Stow Housing Appeals Committee, the Applicant obtained the Planning Board on November 5, 2019 and recorded with the Middlesex Registry of Deeds (Southern District) as Plan No. 59 of 2020. —’s endorsement of the ANR plan identified above. This ANR plan redrew certain lot lines to accomplish the an intended “land swap” accommodating the siting of the Plantation II well and Plantation II project building, but as noted above discussed, did not create a separate “house lot.” for the Plantation II project. As depicted on this the ANR plan, a 1.2-acre portion of the Plantation I parcel (A-1) is would be combined with the Plantation II Project Lot, and a 1.2-acre portion of the Plantation II Well Lot (Parcel B-1) is would be combined with the Plantation I parcel.~~

✘

Current proposal in Modification Application:

Pursuant to the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant and that the House Lot be separated into a separate lot. In connection with the Modification Application, the Applicant submitted a variance plan to the Board which the Applicant has simultaneously filed with the Board in connection with a separate application for a variance allowing the House Lot to be established as a separate lot. If and when the variance is approved by the Board, the Applicant intends to convert the Variance Plan into an Approval Not Required (or ANR) plan and to submit it to the Town of Stow Planning Board for endorsement and recordation with the Middlesex Registry of Deeds (Southern District). The variance plan no longer shows the “land swap.”

VI. Chapter 61B

Historical Background:

As noted in the Plantation II decision, a portion of the Well lot is currently classified and taxed under G.L. c. 61B as Recreational Land. The Applicant's earlier proposed development entailed a "land swap" under which a portion of this Chapter 61B land (shown as "Parcel B2" on the proposed record plan), would have been conveyed and joined to the Plantation I parcel, and a portion of the Plantation I parcel would have been conveyed and joined to the Well lot. The remainder of the Well lot shown as "Parcel B1" on the proposed record plan) was proposed to remain under Chapter 61B.

The Applicant stated that Parcel B1 would contain over five acres after the land swap, and suggested that the property would otherwise continue to be eligible to be classified and taxed as Recreational Land following the swap. Two wells, a pump house, and underground tanks (fenced) would be located on this parcel, served by a gravel service road from Great Road.⁴ The Board found that the gravel road should be gated to preclude unauthorized vehicle access.

The Board found that the question of whether the proposed development, as modified, will entail a change in use of the property - and thus whether the property will continue to be eligible to be classified and taxed as Recreational Land - is for the Assessor to determine. Application to the Assessor for such determination was a condition of this Remand Decisions.

With respect to Parcel B2, and its intended conveyance and joining to the Plantation I parcel (and residential use), the Applicant stated that such transfer would constitute a sale for other use (that is, other than Recreational use), triggering the Town's right of first refusal under Chapter 61B. The Applicant noted that this right of first refusal is typically triggered by a notice of intent to sell, accompanied by a purchase and sale agreement representing a "bona fide offer" from a third party. In this case, the intended conveyance of Parcel B2 in this case does not fit the statute's requirements, especially where no purchase and sale agreement will be entered into until after any comprehensive permit is issued. As stated by the Applicant, "the timeline for the Owner to provide a notice of intent to sell to the Town of Stow is not at the present time when no comprehensive permit has yet been granted for the project but instead will be when the terms of the land swap are finalized."

The Board found that the intended conveyance of Parcel B2 would appear to trigger the Town's right of first refusal, and that such right of first refusal will not ripen until such time that the "land swap" is to be executed. Under the Remand Decisions, the owner of Parcel B2 was required to comply with all requirements of G.L. c. 61B. s. 9 with respect to such intended conveyance.

⁴ The Town Assessor has advised that the land under the proposed improvements will be removed from Chapter 61B.

The Remand Decisions were subject to compliance by the Applicant, and all related parties and successors in interest, with all requirements of G.L. c. 61B.

Current proposal in the Modification Application:

As the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant and that the House Lot be separated into a separate lot there will no longer be a “land swap” and the land subject to Chapter 61B land (Parcels B1 and B2, as described above) are and will be in the single ownership of SEHC. As proposed before, the Chapter 61B land will be improved with two wells, a pump house, and underground tanks (fenced) would be located on this parcel, served by a gravel service road from Great Road. The Board continues to find that the gravel road should be gated to preclude unauthorized vehicle access.

The Board continues to find that the question of whether the proposed development, as modified, will entail a change in use of the property - and thus whether the property will continue to be eligible to be classified and taxed as Recreational Land - is for the Assessor to determine. Application to the Assessor for such determination is a condition of this decision.

As there will no longer be a transfer of the land, the discussion above around the implications of a conveyance under Chapter 61B are not applicable.

This approval otherwise remains subject to compliance by the Applicant, and all related parties and successors in interest, with all requirements of G.L. c. 61B.

VII. Water Resource Protection District

Historical Background:

In the Applicant's original Plantation II proposal in 2010, both the project building and the leaching fields of its Title 5 wastewater disposal system were located within the Water Resource Protection District (WRPD). The Board waived provisions of the Zoning Bylaw prohibiting uses generating the discharge of wastewater exceeding 110 gpd per 10,000 square feet within the WRPD. As noted above, the Board's waiver of the WRPD regulation was the basis for the Appeals Court reversal in the *Reynolds* decision.

Following the *Reynolds* decision, the Applicant's engineers redesigned the project. The application submitted in August of 2017 kept the project building within the WRPD, but moved the leaching fields outside the WRPD boundary. Abutters to the project site continued to express concerns regarding the safety of their wells given the proximity of the leaching fields to their properties. While the Board was vetting these concerns with the Town's Title 5 consultants, the Applicant decided to abandon plans for a Title 5 system serving Plantation II, and instead seek approval from the Department of Environmental Protection (DEP) for a Groundwater Discharge Permit for a facility to handle the combined wastewater flow of Plantation I and Plantation II.

The current project design locates such facility outside the WRPD, and the Applicant's engineers assert that discharge from this facility will pose no threat to neighboring wells - in particular, no elevated levels of nitrogen at their property boundaries.

Due to the proximity of the proposed facility to the WRPD and to neighboring properties, the Board continued to be concerned with the safety of the design and whether the WRPD Bylaw provisions might safely be waived. Based on such concerns, the Board requested the opinion of its consultant as to whether, given the proximity of the proposed wastewater treatment facility to the WRPD, the facility poses a threat to health and safety. The response of the Board's consultant included the following opinion:

"The proposed Waste Water Treatment Facility is located outside of the WRPD, does not contain hazardous materials and will have routine inspections/maintenance by a licensed professional with reporting requirements to DEP. The effluent discharged from the Waste Water Treatment Facility will have a greater level of treatment and lower nitrogen levels than if both [Plantation I and II] lots used a Title 5 system similar to the existing system on Plantation Apartments.

The Groundwater Discharge Permit, when issued by DEP, will have strict testing requirements and standards and will typically require testing of monitoring wells. The effluent being discharged from the facility will be monitored for the nitrogen levels set in their permit and DEP has the jurisdiction to enforce these pre-determined levels.

It is the opinion of this office that the use of a properly permitted Waste Water Treatment Facility located outside of the WRPD will not pose a threat to health and safety. The implementation of this treatment facility may actually improve the water quality in the area."

Susan E. Carter, P.E. LEED-AP, Director of Engineering and President, Places, Associates, Inc.

Based on the above advice, the Board found that it may, consistent with its responsibility to protect public health and safety, waive applicable provisions of the WRPD, and approve this project, subject to the Applicant obtaining a Groundwater Discharge Permit for the combined treatment of Plantation I and II, and subject to such permit becoming final.

The Board found that it may be useful to establish a baseline for existing nitrogen levels in the wells serving those properties abutting Assessor's Map U-11, Parcel 10. Accordingly, the Applicant was required pay the costs of testing the well of any abutter to the project site, who so elects, to establish existing nitrogen levels only, prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

Current proposal in Modification Application:

In the Modification Application, the Applicant has proposed, based on input from the abutters as well as the Massachusetts Department of Environmental Protection in connection with permitting applications for the wastewater treatment facility and new wells, to move the

leach field an even greater distance away from the WRPOD and the abutter's property lines. Given this increased distance and again relying on the advice of the Board's consultant, the Board finds that it may, consistent with its responsibility to protect public health and safety, waive applicable provisions of the WRPD, and approve this project, subject to the Applicant obtaining a Groundwater Discharge Permit for the combined treatment of Plantation I and II, and subject to such permit becoming final.

The Board finds that it may be useful to establish a baseline for existing nitrogen levels in the wells serving those properties abutting Assessor's Map U-11, Parcel 10A-A1. Accordingly, the Applicant shall pay the costs of testing the well of any abutter to Assessor's Map U-11, Parcel 10A-A1, who so elects, to establish existing nitrogen levels only, prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

VIII Waivers

Massachusetts General Laws c. 40B, §§20-23 empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers are "consistent with local needs" under the statute. ~~In its original application for the Plantation I modification, the Applicant did not submit a list of waivers sought, but did so at the Board's request. In the Remand Application, the Applicant has requested several additional waivers with respect to Plantation I relating to use of land (Section 4.1.1 of the Zoning Bylaw) and minimum side setback (Section 4.4 of the Zoning Bylaw).~~ The Board understands that reasonable waivers from local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G. L. c. 40B, §§ 20-23.

The Applicant included its August 10, 2017 application to the Board a "List of Exceptions to the Zoning Ordinances and other Local Land Use Requirements." This List was updated several times prior to the Board's Plantation II decision, in which the Board granted waivers and denied others. As part of the Remand Application, the Applicant submitted a revised list of waivers, and modifications to waivers granted, reflecting proposed project changes. As part of the Modification Application, the Applicant has submitted a further revised list of waivers, and modifications to waivers granted, reflecting proposed project changes.

Under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic." Although the Applicant has not provided documentation to demonstrate that the project would be rendered uneconomic *but for* the specifically requested waivers and exceptions, the Board has reviewed the Applicant's waiver requests and has granted those that are consistent with protection of the general health, safety and welfare. The Board has denied requests that do not appear necessary to construct the Project. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted do not either alone, or in the aggregate, render the project uneconomic.

In the event that the Applicant or the Board determines that the final design of the project necessitates further waivers, the Applicant shall submit a written request for such waiver(s) to the Board. The Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.

The Board's decision as to each of the waivers and exemptions requested is set forth in **Revised Appendix B, Decision on Waivers**. Revised Appendix B to this Decision supersedes the waiver decisions in Appendix B to the ~~January 11, 2019 decision~~ July 21, 2020 Remand Decisions for both Plantation 1 and Plantation 2. The only waivers granted are those expressly approved in Revised Appendix B. If a waiver is not expressly approved in Revised Appendix B, it is denied. All local regulations, other than those expressly waived in Revised Appendix B, are applicable to this project, including regulations for which no waiver was requested. No "plan waiver" is granted.

GRANT OF PERMIT

Subject to the conditions set for hereinafter, the Board grants ~~the Applicant's requested modifications of the Plantation I~~ this comprehensive permit, ~~(the "Permit") to the Applicant for the purposes of constructing the Plantation II project. These modifications are limited to the plan revisions necessitated by the Plantation II project, including the creation of the Easement and Easement Area; the Land Exchange; Cistern improvements; and service by the Wastewater Treatment Facility ("Plantation I Modifications") all as described above in Section I, Proposed Changes. As used below, the term "Project" and "Project Plans" refer to the Plantation II project and project plans~~ project proposed. The Board notes that 760 CMR 56.05(8)(d) provides that:

CONDITIONS

"The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic...."

In reaching this Decision, the Board has endeavored to ensure that the conditions herein do not render the project uneconomic and that the conditions are consistent with local needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

1. The Comprehensive Permit application was based on a Project Eligibility letter issued to the Applicant by DHCD on August 10, 2017. This Permit is conditional upon the execution of one or more Regulatory Agreement(s) (updating the existing Regulatory Agreement for Plantation I if DHCD deems appropriate) for this Permit by DHCD, the Applicant and the Town of Stow, and issuance of Final Approval from DHCD. Issuance of Final Approval and the execution of such Regulatory Agreement(s) is a condition

precedent to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.

2. The Applicant shall comply with the terms of the Regulatory Agreement(s) and the Project Eligibility letter of August 10, 2017, to the extent applicable, prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit. No building permit shall be granted until the terms and conditions of the Regulatory Agreement(s) and project eligibility letter have been complied with in full, except for those which by their nature are to be complied with during and after construction of the project.

3. ~~1.~~ The Proposed Changes Project shall conform to the following Plans:

A plan prepared by Dillis & Roy Civil Design Group entitled “Site Construction Plan, Plantation Apartments II”, dated ~~May 5, 2017, as updated through November 14, 2018~~ (ten August 29, 2022 (consisting of eleven sheets; see Revised Appendix A) ~~“Plantation Apartments II”, dated July 7, 2017 (four sheets; see Revised~~

A plan prepared by Dillis & Roy Civil Design Group entitled “Plan of Land in Stow, Massachusetts”, dated October 12, 2022 (consisting of one sheet; see Appendix A)

Plans prepared by The Architectural Team, Inc. and Dillis & Roy Civil Design Group entitled “Plantation Apartments I & II”, dated ~~May 22 August 29, 2017~~ 2022 (six consisting of twenty-one sheets; see Revised Appendix A) (While building height, exterior elevations and building and wall sections were presented in separate plans before, with the Modification Application, this information is presented in sheets A4.01, A5.01, A5.20 and A5.21 of these plans).

All of the above as further modified to ~~comport~~ comply with the requirements of this Decision ~~and/or the Plantation II Decision~~; as well as any changes deemed necessary by the Building Inspector, the Planning Department, or the Board's consultant for compliance with this Decision ~~and/or with the Plantation II Decision~~.

Conditions relating to Project Plans and Erosion Control

Prior to site disturbance, the following additions, changes and corrections shall be incorporated into revised Plan sets for the Project. No site disturbance shall occur until the Building Department and Highway Department, and, where noted, the Planning Department, with the advice of the Board's consultant, has reviewed and approved the Plans for compliance with the following conditions:

4. The Applicant, and all agents thereof, shall comply with all conditions contained in Appendix C to this Decision pertaining to Plan Changes, which Appendix is expressly incorporated into this Decision.
5. ~~2.~~ The Drainage design shall be updated on the Plans to account for the widening of Johnston Way, which will increase the area of impervious surface at the site and the volume of water discharged. Additional flows shall be pre-treated.

Barbara [B1]
Planning to finalize

6. ~~3.~~ Historically the Board required that the Plans shall be amended to include details regarding the proposed paving overlay of Johnston Way, including cross sections to indicate width; details as to any required tree removal; the extent of required grading and provisions to maintain adequate access to Plantation I during construction of road improvements; details and limits of repaving, as well as all sawcuts; and information on the geometry of Johnston Way and detail regarding the connection of Johnston Way to Great Road. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
7. ~~4.~~ Historically the Board required that Pavement Specifications on sheet C3.1 of the Plans shall be amended to reflect relevant work on the Plantation II site. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
8. ~~5.~~ Areas for snow storage along Johnston Way shall be defined on the Plans.
9. The Water System Plan shall be amended to include applicable notes and detail regarding installation of the water line in the wetland resource area by directional drilling. In addition, prior to site disturbance, the Applicant shall obtain an Order of Conditions from the Conservation Commission, providing a copy of such OOC to the Planning Department as agent for the Zoning Board of Appeals. With the Modification Application, the Board acknowledges that the Applicant submitted the Order of Conditions dated May 27, 2021 and recorded with the Middlesex County Registry of Deeds (Southern District) in Book 78062, Page 117 together with the Conservation Commission minutes date July 5, 2022 approving a slight change to the plan under the Order of Conditions. This submission satisfies this condition of the Decision. In the event that it proves infeasible or uneconomic to install the water line by directional drilling, the Applicant may obtain an amendment to the OOC by application to the Conservation Commission to proceed with direct installation, including temporary disturbance of the buffer of naturally occurring plant materials required by the Wetland Bylaw to be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet, without further application to the Board, provided that a copy of the amendment to the OOC shall be provided to the Planning Department as agent for the Board.
10. Historically the Board required that cut sheets for all exterior lighting fixtures utilized shall be reviewed and approved by the Planning Department as agent for the Zoning Board of Appeals. With the Modification Application, the Applicant has submitted updated plans with this information (Landscape plan 2.1). This condition is considered satisfied. The Board continues to require that no substitutions of lighting types are allowed to the fixtures unless found by the Planning Department to have equivalent illuminance specifications. Prior to issuance of the first building permit, confirmation of full cut-off fixtures shall be provided.

11. Historically the Board required that the Lighting Plan shall be amended to reflect structural fixtures. Detail for the exterior light posts shall be added to the Plan, including height. With the Modification Application, the Applicant has submitted updated plans with this information (Landscape plan 2.1). This condition is considered satisfied.
12. Historically the Board required that the Lighting Plan shall be amended to show an adequate level of light at the entrance and plaza areas, provided such increase from 1 foot candle remains in accordance with Section 3.8.1.5 of the Zoning Bylaw. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
13. ~~6. The~~Historically the Board required that the Record Plan shall be amended to show all properties entailed in the Project, and the owners of all abutting properties shall be labeled. The Plans shall be stamped by a Registered Land Surveyor. With the Modification Application, the Applicant has submitted an updated Record Plan with this information. This condition is considered satisfied.
14. Historically the Board required that the Plans shall be amended to include signage at turnaround areas labeled "no parking," to ensure access by emergency vehicles. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
15. Historically the Board required that the Plans shall indicate compliance with ADA accessibility requirements at the building entrance. Additions to the Plan may include but not be limited to spot elevations for top and bottom of ramps and curbs, and tactile detection strips. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
16. Originally, the Board required that the Plans be amended to contain sufficient detail of the proposed grass paved shoulder along the western side of the building, so as to provide a determination of the shoulder's ability to withstand H-20 loading requirements, and to be maintained and accessible at full width year round. The Board also required that such detail shall be provided to the Fire Department for approval prior to commencement of construction. However, in the course of preparing plans for construction and the Modification Application, the Applicant received a request from the Fire Department to eliminate the proposed grass paved shoulder. Accordingly, the Project proposal no longer contemplates a grass paved shoulder and this condition is no longer required.
17. The Plan notes shall be modified to provide clarification regarding the conditions of the post development woods area.
18. ~~7.~~Discrepancies on page 5 of the drainage report regarding the increase of runoff at analysis point C shall be resolved and resubmitted for review by Planning Department with advice of the Board's consultant. The current report indicates no increase in runoff and refers to a table ~~in the report~~ which shows negligible increase in runoff.

19. ~~8.~~ Seed mixes for erosion control shall be added to the Landscape plan for final review of appropriate species by the Board's consulting engineer.
20. ~~9.~~ Substantive revisions to the Project or the Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, Applicant desires to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR 56.00 et seq.
21. ~~10.~~ Where this Decision provides for the submission of plans or other documents to the Building Inspector, the Board, or its agent, a written response shall be provided ~~to~~ the Applicant as to whether such plans or other documents are consistent with this Decision within forty-five days of receipt of such plans or other documents.

Regulatory Compliance: State, Federal and Local

22. ~~11.~~ The Project, and all construction, dwelling units, utilities, drainage, earth removal, and all related improvements of the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.
23. [Development of the Plantation II component of the Project shall comply in all respects with the conditions contained in the Project Eligibility approval for the Project issued by DHCD dated August 10, 2017 and any modifications thereto.](#)
24. ~~12.~~ The Project shall comply with all Town of Stow rules, regulations, and other local bylaws and requirements not expressly waived by this Decision.
25. ~~13.~~ The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Stow Board of Health and the Massachusetts Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, private wells, resource protection, water supply and low impact development best management practices, except as expressly waived in this Decision.
26. ~~14.~~ Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.
27. ~~15.~~ The Project shall comply with the Town of Stow Zoning Bylaw in effect at the time of the Application, except as expressly waived in this Decision
28. ~~16.~~ Stormwater management systems shall meet the ~~requirements~~ [Guidelines](#) of the Department of Environmental Protection Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised.

29. The total number of dwelling units in the Project shall be limited to a total of 87 units, including the 50 existing units of Plantation I and the 37 new units in Plantation II; provided, however, that the Applicant may apply to the Board to increase the number of dwelling units if and when public water service becomes available on Great Road at the ends of Johnston Way and DeVincent Drive.

Dwelling Units; Affordability in Perpetuity

30. The Plantation II component of the project shall consist of thirty-seven one-bedroom apartments, a community room, meeting room and management office located in a single three-story building, constructed in conformity with the Plans specified in Condition 3 above. For the avoidance of doubt, the Plantation I component of the project shall continue as built pursuant to the original Plantation I decision, with the additional improvements permitted in this Decision.

31. All thirty-seven apartment units of the Plantation II component of the project shall be affordable, in perpetuity, to individuals and/or families earning no more than 60% of area median income, as calculated pursuant to formulas determined by the U.S. Department of Housing and Urban Development (HUD) or DHCD. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision. All thirty-seven apartments shall be subject to a permanent affordable housing restriction conforming to G.L. c. 184, ss. 31-33 and in a form acceptable to the Town, and recorded in the Registry of Deeds. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision.

32. Said affordable housing restriction, enforceable by the Town of Stow, requiring that the affordable units of the Plantation II component of the Project remain affordable in perpetuity and in a form approved by the Board, shall be recorded senior to any liens on the Project locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision with the affordable housing restriction as required by DHCD.

33. None of the apartment units of the Plantation II component of the Project may be rented to anyone other than a qualified tenant as required by this Decision and consistent with the requirements of DHCD and other relevant state agencies governing the rental of below market rate units in a comprehensive permit project. To the extent allowed by law, the units shall be rented to persons meeting requirements for elderly housing or otherwise eligible for such housing. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I

component of the project shall continue with the affordability set forth in the original Plantation I decision with the affordable housing restriction as required by DHCD.

34. Upon the rental of an affordable dwelling, the Applicant or its successors or assigns shall provide written notice to the tenant that the premises are subject to an affordable housing restriction and is subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.

Management Documents = ~~Operating Agreement~~

~~17.~~ The Applicant shall prepare documents in a form that conforms to this Decision and applicable law designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.

35. Historically, the Board required that the Applicant shall prepare an Operating Agreement to be executed by appropriate representatives of the Plantation I and Plantation II projects, to govern the coordinated use, repair, and maintenance of the ways, facilities and infrastructure to be shared by the two developments. Such Operating Agreement shall ensure that the terms and conditions of this Decision and the Plantation ~~II~~ Decision are enforced. The Applicant shall provide a copy of the Operating Agreement, and any updates to the same, to the Planning Department. Note: this Operating Agreement is distinct from the Operation and Maintenance ("O & M") Plan described in Condition ~~19~~38F below, which shall contain the specific operating and maintenance tasks to be shared by Plantation I and Plantation II pursuant to the Operating Agreement. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

36. ~~18. The Operating Agreement, and any subsequent~~All management documents shall provide that the Town of Stow shall not have any legal or financial responsibility for; operation or maintenance of roadways, driveways, parking areas, stormwater management systems, snow plowing, landscaping, trash disposal or pick up, street lighting or other illumination, or other roadway infrastructure within the Project or the locus.

Profitability

37. The separate Plantation I and II components shall be limited to the profit allowed under the applicable Regulatory Agreement (the "allowable profit").

38. Any profit that is above the allowable profit pursuant to the applicable Regulatory Agreement, shall be returned to the Town of Stow for use by the Town. The profit limitation may be enforced the Town or its agencies, boards or commissions at anytime

39. Conditions Precedent to Commencement of Project

~~19.~~ The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until the following conditions are satisfied

A. 1.) The Board of Selectmen have waived those provisions contained in the 1982 Covenant, identified above in Section ~~III~~IV, pertaining to additional development of the site ~~and single ownership of the parcels~~; and 2) the Selectmen have executed a new Covenant or Covenants with SEHC with respect to all affected property associated with Plantation I and Plantation II, such Covenant(s) being binding on all successors in interest, and recorded in the Registry of Deeds.

B. The Building Inspector has reviewed and approved the Applicant's building, site and engineering construction drawings (Plans). These plans shall include the location and design (including materials to be used) of all retaining walls to be used within the project. Engineered plans for all retaining walls ~~must~~shall be submitted to and approved by the Building Inspector; boulder retaining walls shall not be used. The Building Inspector, on behalf of the Board shall review the Plans for conformance with this Decision; for compliance with local requirements not waived in the Permit; and with state and federal codes. The Applicant shall designate an Onsite Contractor, who shall demonstrate to the satisfaction of the Building Inspector that these Conditions Precedent have been satisfied, to the extent possible.

C. Site Plans fully compliant with the requirements of Section 4.4 through 4.17 of the Site Plan Rules and Regulations, except as waived in this decision, have been reviewed and approved (without the need for public hearing) by the Planning Department with the advice of the Board's consultant.

D. The Department of Environmental Protection (DEP) has issued a Groundwater Discharge Permit as proposed by the Applicant, serving Plantation II and Plantation I, and such Permit has become final.⁵

E. The Planning Department, with the advice of the Board's consultant, has reviewed and approved a reasonable timeline submitted by the Applicant for commencement of construction and completion of the proposed project (including infrastructure, utilities, and landscaping).

F. The Planning Department, with the advice of the Board's consultant has reviewed and approved an Operations and Maintenance Plan (without the need for public hearing).⁶ The Plan shall include, at a minimum, 1) maintenance during and post construction; and

⁵ The Applicant had originally proposed a wastewater disposal system serving Plantation II only, to be permitted under Title 5 by the Stow Board of Health. Approximately a year into the Board's review of the project, the Applicant decided to pursue approval by the Department of Environmental Protection of a Groundwater Discharge Permit to serve both Plantation I and II, necessitating plan changes. Should the Applicant, for any reason (including but not limited to failure to obtain a Groundwater Discharge Permit, or invalidation of any such Permit), seek to have the proposed development served by a system permitted under Title 5, the Applicant must apply to the Board for modification of this permit.

2) perpetual maintenance to the extent required and monitoring of the drainage systems (routine and seasonal); the wastewater treatment facility and related sewage disposal elements; Johnston Way and the access driveway from Johnston Way to the Plantation II site; landscaping installed on the ~~Plantation II site~~ Project Lot; cisterns; and other project infrastructure. The Operations and Maintenance Plan shall bind the Applicant and all subsequent owners, ~~and, with respect to facilities common to Plantation I and Plantation II, shall bind the owner of Plantation I, as the owners of Plantation I and II have joint and several responsibility for maintenance and repair of such common facilities.~~ The Applicant shall provide a copy of the Operations and Maintenance Plan, and any updates to it, to the Planning Department.

G. The Planning Department, with the advice of the Board's consultant has reviewed and approved an erosion control plan to be in effect for the duration of site disturbance and project construction (without the need for a public hearing). Such plan shall include measures for extreme weather events. Such plan ~~must~~ shall ensure that there is no erosion or sedimentation from the project site onto Johnston Way, Great Road, ~~Potash Brook, wetland resources,~~ or abutting properties. The Onsite Contractor shall ensure compliance with the erosion control plan for the duration of site disturbance and project construction.

H. A pre-construction meeting shall be held with Town Staff, the Town's consultant and the on-site contractor to review the construction schedule, coordination with town officials for parking and stockpile of materials, erosion control methodology and construction schedule.

I. ~~The~~ The Applicant, Monitoring Agent and DHCD have executed a Monitoring Agreement as provided by DHCD, if applicable.

J. The Applicant, the Town of Stow and DHCD have executed such Regulatory Agreements as required by DHCD, and said Agreements have been recorded at the Middlesex Registry of Deeds. The Regulatory Agreement for the Plantation II component shall provide that all units shall be restricted as affordable in perpetuity to households with less than 60% of the applicable area median income. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision and applicable Regulatory Agreement.

K. Historically the Board required that the owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds all easements necessary to provide sufficient vehicular and pedestrian access to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from Great Road, including ~~an easement~~ but not limited to easements over Johnston Way and over the "Easement Area" depicted on the Plans on the Plantation I property. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

L. ~~The~~Historically the Board required that the owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds ~~a utility easement and any other~~ all easements necessary for installing and maintaining utilities serving Plantation II, including but not limited to the provision of water service to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from the Well site (Assessor's Map R-22, Parcel 1A-B), and all other easements necessary for the installation and use of utilities serving Plantation II, and for use of the cisterns on Plantation I property. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

M. ~~The~~Historically the Board required that the Applicant has executed and recorded in the Registry of Deeds any easements necessary to provide access to the Plantation I project owner with respect to any shared infrastructure, ways, and other project components, ~~including but not limited to easements over Johnston Way, the "Easement Area" on.~~ In the Modification Application, the Applicant proposes that all the property for Plantation I property intended for access to the and Plantation II property; and easements necessary be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

N. Historically the Board required that the Applicant has executed and recorded in the Registry of Deeds an easement over Assessor's Map U-10, Parcel 42, granted by the owner of such parcel, for the benefit of the Applicant, providing an access and utility easement for use of connection to the wastewater treatment facility; utilities, including the water line intended to serve Plantation II; and cisterns Pump House. In the Modification Application, the Applicant submitted a copy of this easement as recorded with the Registry of Deeds. This condition is considered satisfied.

O. The adequacy of the proposed well to provide service to the development has been confirmed.

40. 20. Conditions Relating to Construction

A. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust, and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00 AM or on Saturday before 9:00 AM. Construction activities shall cease by 6:00 PM on all days. No construction or activity whatsoever shall take place on Sunday. Interior work may be permitted at the discretion of the Building Inspector where necessary to address unforeseen circumstances.

B. The Applicant shall designate an Onsite Contractor who is responsible for all aspects of site work and project construction for the duration of the project. The name and phone numbers, including an emergency phone number, shall be provided to the Building

Inspector [and to the Planning Department as agent for the Board](#). The Onsite Contractor shall demonstrate to the Building Inspector's satisfaction that Conditions 4-18 have been satisfied.

C. Additional erosion control materials ~~must~~[shall](#) be readily available, either on site or adjacent sites) to allow replacement of measures as the project proceeds.

D. The Onsite Contractor shall comply with the approved Erosion Control Plan and develop a strategy for controlling the site in the event an extreme weather event is predicted.

E. Trees along the periphery of the limit of work shall be evaluated and removed if they are likely to sustain damage during construction (cut or filled root zone)

F. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the locus. No stumps or other debris shall be buried on the locus.

G. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations.

Administrative

41. The fees for consultant reviews incurred in the [Zoning](#) Board's review of this project application shall be the obligation of the Applicant. No site disturbance shall commence until all past fees are paid in full. The Applicant shall be responsible for fees incurred pursuant to consultant review of all project documents as provided in the Conditions above (including but not limited to review of Operations and Maintenance Plan; Erosion Control Plan; Building and site plans).

42. [The existing tenants of Plantation I component shall continue to occupy their units uninterrupted while the work described and permitted in this Decision is in process and nothing herein shall be deemed to invalidate any existing certificates of occupancy for the Plantation I component. Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit for the Plantation II component until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, and all required inspections have been completed by the Fire Department. All cisterns indicated in the project plans, as well as any other improvements required by the Fire Department, shall be installed and operational prior to the grant of any occupancy permit for the Plantation II component.](#)

43. [Pursuant to the Project Eligibility letter issued by DHCD, following the issuance of certificates of occupancy, the Applicant shall submit to the Board and to the Stow Board of Selectmen the comprehensive permit project cost certification, which the Applicant anticipates doing on a consolidated basis for both Plantation I and Plantation II components.](#)

Conditions Relating to Johnston Way

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. In lieu of compliance with the provisions of Article 5, the Board imposes the following conditions to ensure public safety and to clarify the obligations of the parties.

44. ~~21.~~ The ~~owners of Plantation I and Howner~~ shall bear and have ~~joint responsibility~~ and ~~several responsibilities and obligations~~ obligation for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.

45. ~~22.~~ Johnston Way shall not be presented to Town Meeting for acceptance as a public way.

46. ~~23.~~ Johnston Way shall not service any further developments.

Conditions relating to Erosion Control

The Applicant and all agents thereof shall comply with all conditions contained in Appendix C to this Decision pertaining to Erosion Control.

Additional Conditions

47. ~~24.~~ Invasive Plants. No plants on the Commonwealth's Department of Agriculture "Invasive Plants" list (see <https://www.mass.gov/service-details/invasive-plants>) may be used in the landscaping or any other area of the ~~Plantation I or Plantation II~~ properties proposed project.

48. ~~25.~~ No obligation accruing to Town. The Town shall at no time be responsible for the maintenance of, or repairs to any part of the project, or to the way(s) and easement areas serving the project; or any infrastructure or utilities associated with the project.

49. ~~26.~~ Shared responsibility for infrastructure. ~~The~~ Historically the Board required that the owner of the Plantation I project and the owner of the Plantation II project shall enter into contractual agreement(s), acceptable in form to Town Counsel and naming the Town of Stow as a beneficiary, whereby each accepts joint and several responsibility and liability for the performance and cost of: the maintenance and snow clearance for the shared portion so Johnston Way; the maintenance of the fire protection water cisterns; compliance with all maintenance and regulatory requirements for the sewer treatment facility shared by the Plantation I project and Plantation II project. Further, the owner of the Plantation I project and the owner of the ~~Planation~~ Plantation II project shall execute and record permanent easements, in forms satisfactory to Town Counsel, consistent with the installation, operation, and maintenance of all utilities as follows: an easement granted by the owners of Plantation I to the owners of Plantation II allowing the installation, operation, and maintenance of water service equipment within and across the

Plantation I locus connecting the Plantation II well to the Plantation II project; an easement granted by the owners of Plantation II to the owners of Plantation I allowing the installation, operation, and maintenance of all elements of the shared wastewater treatment facility location on the Plantation I locus; and easements in Johnston Way allowing Plantation II to improve and use Johnston way for passage to and from the Plantation II project, and for the installation, maintenance, and repair of utilities serving the Plantation II project. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

50. Community Preservation Act. The Applicant shall comply with any conditions associated with the funding provided through allocation(s) by the Town pursuant to the Community Preservation Act, and comply with the funding agreement of such allocation.

51. Lighting. All proposed lighting including freestanding fixtures or those attached to a structure shall comply with Section 3.8.1.5 (Exterior Lighting) of the Zoning Bylaw. Specification cut sheets for each type of fixture shall be provided to the Board or its agent.

52. Lighting. Lighting from the new parking area associated with the development shall be shielded from the Plantation I buildings and from abutters to the project site.

53. ~~27.~~ Johnston Way safety improvements. To improve pedestrian safety, historically the Board required that a center line shall be installed on Johnston Way and the access way connecting Johnston Way to the Plantation II site. With the Modification Application, the Applicant requested this requirement be waived due to the narrow width of the private drive. The Board has agreed to waive the requirement for a center line. Signage for pedestrians, conforming to Bylaw requirements and otherwise satisfactory to the Building Inspector, shall also be installed.

54. ~~28.~~ Cisterns. The ~~owners of Plantation I and Plantation II are jointly and severally owner~~ is responsible for the maintenance, ~~and~~ repair, ~~and sustained operation~~ of all cisterns on the Plantation I and Plantation II sites, including those cisterns currently in existence, and those to be constructed in conjunction with ~~the Plantation II development. The cistern currently located on the Plantation I property, and any additional cisterns installed on the Plantation I property, shall be available for use by Plantation II in perpetuity, or until such time as a sufficient alternative is established by Plantation II for use on the Plantation II site~~ Plans and location of cisterns must be finalized prior to issuance of any Building Permit.

55. ~~29.~~ Wastewater Treatment Facility. The ~~owners of Plantation I and Plantation II are jointly and severally owner~~ is responsible for operation and maintenance of the wastewater treatment facility to be constructed for service to both ~~projects~~ the new development and existing development.

56. ~~30-~~Other Common Facilities. ~~The Historically the Board required that the~~ owners of Plantation I and Plantation II are jointly and severally responsible for maintenance and repairs to all other common facilities and common areas serving both projects, to be constructed in conjunction with this Permit, including but not limited to access roads and driveways, utilities, and signs. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

57. ~~31-~~Decommissioning of existing septic system serving Plantation I. Prior to the issuance of any occupancy permit for the Plantation II component of the Project, the Applicant shall provide documentation to the Planning Department as agent for the Board, and to the Stow Board of Health, that the existing septic system has been decommissioned pursuant to the requirements and standards of the Massachusetts Department of Environmental Protection.

58. ~~32-~~Reports. The Applicant shall provide to the Board of Health all periodic reports or monitoring reports pertaining to the wastewater treatment facility as deemed necessary by that Board.

59. ~~33-~~Soil Testing. Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.

60. Testing of wells The Applicant shall pay the costs of testing the well of any owner of property abutting Assessor's Map U-11, Parcel 10A-A1. who so elects, to establish existing nitrogen levels prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

61. Inspections. Such reasonable inspections of the project site and construction by the Board's consultant, as needed to implement the terms of this Permit, shall be funded by the Applicant pursuant to s G.L. c 44, s. 53.

62. ~~34-~~Agents, successors and assigns. All terms and conditions of this permit shall be binding upon the Applicant and all agents, successors and assigns.

Zoning status of single-family house. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision in any respect.

CONCLUSION

~~The requested modifications to Plantation I are~~ This Permit is granted with conditions. This Decision was approved by the Stow Zoning Board of Appeals at a meeting of the Board on ~~DATE~~ DATE [] pursuant to the following vote:

Jones:
Byron:
DeMore:
Dodd:
Golder:

NOTICE OF RIGHTS OF APPEAL

Any person aggrieved by this Decision may file an appeal pursuant to the provisions of General Laws, c. 40A, Section 17. Such appeal must be filed within twenty (20) days of the filing of this decision in the Office of the Town Clerk.

The Applicant has the right to appeal this Decision pursuant to the provisions of General Laws c. 40B, Section 22.

Copies of this Decision and notice thereof must be recorded by the Applicant at the Middlesex South Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must thereafter be filed with the Board of Appeals.

**THIS CONCLUDES THE DECISION OF THE BOARD OF THE APPEALS.
SIGNATURES OF THE BOARD MEMBERS ARE FOUND IMMEDIATELY BELOW.**
STOW ZONING BOARD OF APPEALS

Mark Jones, Chairman

William Byron

Andrew DeMore

Ernest Dodd

Leonard Golder

DATE: _____

Document comparison by Workshare Compare on Monday, November 14, 2022
11:18:33 AM

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Document 1 ID	file://C:\Users\gcloutier\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\YKL05A9C\KP-#723975-v1-STOW_bhc_final_Plantaton_I_decision.DOCX
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Document 2 ID	iManage://imanager.kleinhornig.com/KHDOCS/833653/5
Description	#833653v5<imanager.kleinhornig.com> - SEHC Johnston Way 2022 Combined and Amended 40B Decision after Remand (Comprehensive Permit)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	377
Deletions	193
Moved from	7
Moved to	7
Style changes	0
Format changes	0

Total changes	584
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COMBINED AND REVISED PLANTATION LAND II DECISION
TOWN OF STOW

ZONING BOARD OF APPEALS

Decision on ~~Remand~~ Application for Modification of Revised Comprehensive Permit
"Plantation I" and "Plantation II"

Applicant: Stow Elderly Housing ~~Corporation~~ Corp.
22 Johnston Way, Stow, MA 01775

Owner: Historically the owner was proposed to be Plantation II Apartments LLC
and Plantation Apartments Limited Partnership
(address identified on application: "c/o Stow Elderly Housing
Corporation, 22 Johnston Way, Stow, MA 01775")

The owner will now be Applicant with a ground lease to an affiliate of
Applicant as may be desirable to facilitate financing with low-income
housing tax credits.

Locus: Historically the locus was 252 Great Road, 22 Johnston Way and property
off Great Road
Assessor's Map U-11, Parcel 10
Assessor's Map U-11, Parcel 13-1
Assessor's Map R-22, Parcel 1A-B

The locus is now referred to as 18 and 22 Johnston Way and includes
additional land acquired by the Applicant to serve as part of the well
protection area. The current assessor's map references are:

Assessor's Map U-11, Parcel 10A-A1 (former Parcel A and Parcel A1)
Assessor's Map U-11, Parcel 13-1B3 (former Parcel B3 and Parcel B1)
Assessor's Map R-22, Parcel 1B-2 (former Parcel B2)
Assessor's Map U-11, Parcel 16 (additional land)
Assessor's Map U-10, Parcel 42 (Access Easement serving former Parcels
B1 and B2)

Sitting: [To be updated: Mark Jones, Chairman, William Byron, Ernest Dodd,
Andrew DeMore, Leonard Golder]

**Public Hearing
Dates: original** September 11, 2017, October 16, 2017, November 13, 2017, December 4,
2017, January 29, 2018, March 5, 2018, April 2, 2018, April 30, 2018,
June 4, 2018, June 11 2018, July 16, 2018, August 27, 2018, October 22,
2018, November 8, 2018, November 20, 2018, and December 6, 2018.

Public Hearing

~~Dates: on remand~~ May 18, 2020; June 4, 2020; June 18, 2020; June 19, 2020

Dates: on remand

Public Hearing

Dates: Re Modification

On August 10, 2017, the Stow Elderly Housing Corporation (SEHC or Applicant) submitted an application for a comprehensive permit for a project known as "Plantation II." Public hearing opened on September 11, 2017, and was continued to the dates above. Pursuant to extensions granted by the Applicant, hearing closed on December 6, 2018. The Board deliberated on December 17, December 27, 2018, January 3, 2019, and January 9, 2019.⁴ Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, the Zoning Board of Appeals voted to grant the application for a comprehensive permit for "Plantation II," subject to certain conditions contained in the permit decision ("Plantation II decision"). Concurrently, the Board granted modifications to a comprehensive permit issued in 1982 for the "Plantation I" development ("Plantation I modification"). The two decisions were filed with the Town Clerk on January 11, 2019.

On January 30, 2019, the Applicant appealed the Board's Plantation I modification and Plantation II Decision to the Housing Appeals Committee. In these appeals, the Applicant sought removal of certain conditions in the Plantation II Decision alleged to render the project "uneconomic"; to impose local requirements and regulations unequally to subsidized housing; and to be "inconsistent with local needs." The Applicant sought further amendments to the Plantation II decision to address inconsistencies between such decision and the Plantation I modification. By joint request, both appeals were remanded by the Housing Appeals Committee to the Board for public hearing on certain proposed modifications to the Plantation II project. The Applicant submitted revised plans, a narrative describing modifications requested, and other materials ("Remand Application" on March 12, 2020)

Public hearing on the Remand Application (Plantation I and II) opened on May 18, 2020, and closed on June 19, 2020. Following deliberations, the Board voted to ~~GRANT~~grant the requested modifications to the project, and to issue new decisions for both Plantation I and Plantation II (together, the "Decisions on Remand" and each the "Plantation I Decision on Remand" and "Plantation II Decision on Remand."). These new decisions ~~incorporate~~incorporated the changes approved by the Board, and correct certain minor inconsistencies between the Plantation II decision and Plantation I modification. These new decisions ~~supersedes~~superseded the Plantation II decision and Plantation I modification issued on January 30, 2019.

On November 14, 2022, the Applicant submitted an application for modification to combine the two Decisions on Remand with revised plans and a narrative describing the modifications requested and other materials (the "Modification Application"). With the passage

of time and input from the abutters as well as the Massachusetts Department of Environmental Protection in connection with permitting applications for the wastewater treatment facility and new wells, the Applicant has concluded both that it is able to and that it is desirable to conduct the construction of the Plantation II development and the rehabilitation of the Plantation I project simultaneously under a single Combined and Revised Plantation I and Plantation II Decision of the Board. In brief, the Applicant proposes the following changes to the project since approved pursuant to the two Decisions on Remand:

1. Relocation of the wastewater treatment leach field, to a location further from the property lines with the property abutters;
2. Replacement the Plantation I water supply with new wells which will be permitted by DEP and service both Plantation I and Plantation II;
3. Addition of 14,301 sq. ft. of additional land from former Assessor's Map U-11, Parcel 16 and reconfiguration of the parcels to reintroduce the separation of the House Lot from the projects and otherwise have all the land of Plantation I and Plantation II be owned by the Applicant with ground leased to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits.
4. Changes to infrastructure for fire fighting equipment based on requirements of the Stow Fire Department;
5. Various upgrades to the Plantation I grounds and buildings not previously contemplated as listed below. The existing tenants of Plantation I shall continue to occupy their units uninterrupted while these updates are in process:
 - a. Combining water supply with Plantation II;
 - b. Upgrading HVAC systems;
 - c. Replacing siding with visually consistent siding;
 - d. Installing a new roof;
 - e. Replacing windows and lighting;
 - f. Replacing sliding glass doors with single doors with fixed sidelights;
 - g. Adding a new sidewalk for residents;
 - h. Adding electric vehicle charging stations; and
 - i. Repairing pavement and adding 7 parking spaces.

Public hearing on the Modification Application (Plantation I and II) opened on [____], and closed on [____]. Following deliberations, the Board voted to [Grant/Deny] the requested modifications to the project, and to issue a single new combined decision for both Plantation I and Plantation II. This new decision incorporates the changes approved by the Board. This new decision supersedes the Plantation II decision and Plantation I modification issued on [____].]

I. History of Plantation I and Plantation II and Summary of Proposed Project, including Application on Remand and Application for Modification

Pursuant to a comprehensive permit granted by the Board in 1982, SEHC developed the original Plantation project, now referred to as "Plantation I", containing fifty affordable

apartments for the elderly on parcels off of Great Road. In 2010, the Board granted a second comprehensive permit for "Plantation II", containing thirty-seven additional affordable units for the elderly, to be located on property adjacent to Plantation I. Pursuant to G.L. c. 40B, ss. 20-23, the Board waived certain local regulations for the Plantation II project, including a provision of the Zoning Bylaw limiting the discharge of onsite sewage disposal within the Water Resource Protection District (WRPD). As then designed, both the Plantation II project building and its wastewater disposal system were located within the WRPD.

Appeal was taken under G.L. c. 40, s. 21 and G.L. c. 40A, s. 17 to Middlesex Superior Court by an abutter to the project site. The Superior Court found that the project's wastewater discharge would more likely than not cause nitrogen levels to exceed acceptable levels at neighboring wells, but nevertheless found the project's compliance with state requirements to be sufficient, and upheld the comprehensive permit. In a decision dated September 15, 2015, the Appeals Court reversed, finding that state standards were insufficient to protect neighboring wells; that it was "unreasonable to conclude that the need for affordable housing outweighs the health concerns of existing abutters"; and unreasonable to waive the WRPD Bylaw provision limiting the discharge of wastewater within the District. The Appeals Court directed revocation of the comprehensive permit.

On or about August 14, 2017, SEHC submitted a revised application to ~~the~~ Board for Plantation II. The original project ~~exists~~proposal consisted of thirty-seven affordable one-bedroom rental apartments for the elderly, together with related facilities, and the refurbishment of an existing single-family dwelling, on properties off Great Road. The proposal entailed the reconfiguration of several parcels, owned by related entities²¹, such that 1) the single family dwelling would be located on a lot containing approximately 0.46 acres, with frontage on Great Road ("House Lot"); 2) the thirty-seven housing units would be constructed on a second lot to the south of the house lot, containing approximately 3.3 acres ("Project Lot"); and 3) a third lot, the site of a well to serve the project (Well Lot"). In its Plantation II decision, the Board declined to approve this reconfiguration of lots as requested, noting that it was without authority to do so under the Subdivision Control Law. The Plantation II comprehensive permit was issued subject to endorsement by the Planning Board, granting such relief it deemed proper, of a plan depicting the reconfigured lot lines.

In the Remand Application, the Applicant ~~has~~ eliminated the creation of a separate "House Lot," maintaining a single "Project Lot" to include both the existing single family house and the thirty-seven housing unit development, for a total of thirty-eight units. The Applicant's stated intent with respect to the single family house ~~is~~was to 1) rent it at market rate; or 2) impose a

²¹ Plantation Apartments II LLC owns the parcel (Assessor's Map U-11, Parcel 10) that will contain the existing single-family house and the Plantation II project. Plantation Apartments II LLC also owns the parcel (Assessor's Map R-22, Parcel 1A-B) on which Plantation II's well will be located. SEHC owns the land (Assessor's Map U-11, Parcel 13-1) on which Plantation I is located; the project buildings and other improvements are owned by Plantation Apartments Limited Partnership, which has a ground lease with SEHC.

condominium scheme such that the single family house and the Plantation II development will be separate units, with the single family house unit to be sold at market rate.

In the Modification Application, the Applicant has reintroduced the creation of a separate "House Lot" with the existing single family house and proposed that the remaining land of Plantation I and Plantation II be considered a single "Project Lot" with a thirty-seven unit housing development for Plantation II and the existing fifty unit housing development for Plantation I, to be developed, rehabilitated, owned, leased and operated on a combined basis. The Applicant intends that the House Lot shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House Lot.

In the Remand Application, the Applicant submitted an ANR plan entitled "Plan of Land in Stow, Massachusetts, prepared by Ducharme & Dillis dated September 23, 2019," which was endorsed by the Town of Stow Planning Board on November 5, 2019 and recorded with the Middlesex Registry of Deeds (Southern District) as Plan No. 59 of 2020. This ANR plan redrew certain lot lines to accomplish an intended "land swap" accommodating the location of the Plantation II well and Plantation II project building, but as described above, did not create a separate "house lot."

In the Modification Application, the Applicant submitted a draft variance plan entitled "Variance Plan in Stow, Massachusetts", prepared by Dillis & Roy Civil Design Group dated November 1, 2022, Job No. 4644-2-ZBA-2022 (the "Variance Plan") which the Applicant has simultaneously filed with the Board in connection with an application for a variance allowing the House Lot to be established as a separate lot. If and when the variance is approved by the Board, the Applicant intends to convert the Variance Plan into an Approval Not Required (or ANR) plan and to submit it to the Town of Stow Planning Board for endorsement and recordation with the Middlesex Registry of Deeds (Southern District). The variance plan no longer shows the "land swap," as the Applicant intends to treat all the land other than the House Lot as a single Project Lot in single ownership by the Applicant.

The new Project Lot has frontage on Great Road. A driveway located on the ~~Project House~~ Lot will continue to serve the single family house. The Plantation ~~I and II~~ ~~development~~ ~~developments~~ will be accessed ~~by easement~~ over Johnston Way, a private way currently serving the existing Plantation I development. Plantation I contains fifty affordable apartments for the elderly constructed under a comprehensive permit issued in 1982 to the Stow Elderly Housing Corporation. It consists of six two-story buildings sited around a cul-de-sac (in which Johnston Way terminates), ~~to~~ ~~in~~ the ~~west~~ ~~center~~ of the Project parcel. Ownership and configuration of the ~~Plantation II lots, as well as their relationship to the Plantation I development~~ ~~Project Lot~~, are discussed further below. The Well Lot is part of the Project Lot located to the west of the Plantation I buildings.

SEHC proposes to rent all thirty-seven Plantation II apartments to low- or moderate-income households, ~~and to rent the single family house at market rate, or sell it as a condominium unit at market rate.~~³² All fifty apartments of Plantation I shall continue to be
³² The Project Eligibility Letter issued by DHCD specifies an affordability level of "no more than 60% of area median income" for all thirty-seven rental units.

rented to low- or moderate- income households. SEHC states that, to the extent consistent with applicable law, "a local preference will be implemented to rent up to 70% of the Elderly Housing units to households meeting local preference guidelines, including a preference for current residents of Plantation I." The Project Eligibility Letter states that the project has been approved under the Low Income Housing Tax Credit (LIHTC) program.⁴³ A Special Town Meeting vote on October 19, 2009 approved the allocation of \$825,000 in Community Preservation Funds for the Plantation II project.

At the time SEHC submitted its original Plantation II application, SEHC also submitted an application for modification of the 1982 Plantation I comprehensive permit, to reflect certain changes to that project arising from the Plantation II development. Modifications to the Plantation I comprehensive permit were contained in a separate decision filed with the Town Clerk on January 11, 2019 (the Plantation I modification). In conjunction with its Remand Application on Plantation II, SEHC ~~has~~ submitted requests for changes to the Plantation I modification. ~~These~~Those requests ~~are~~were addressed in ~~a separate~~the Remand Decisions. In the Modification Application, the Applicant requests that the modifications to the Plantation I comprehensive permit now be replaced and combined with the Plantation II comprehensive permit in this decision ~~filed herewith.~~

The issuance of in 2019 of the Plantation II comprehensive permit, as well as the modification of the Plantation I permit, implicated a Covenant entered into by SEHC, for the benefit of the Town recorded in 1982 with the Plantation I permit. This Covenant and its relationship to the Plantation I and ~~Plantation~~Plantation II developments were addressed in the Remand Decisions and are again implicated by the revised applications and are discussed below.

II. Record before the Zoning Board of Appeals

The materials identified in **Revised Appendix A** comprise the record before the Board, with the addition of certain materials submitted in the ~~Remand~~Modification Application.

III. Findings of the Board

A. Findings on "Project Eligibility"

Based on the materials submitted by the Applicant, the Board makes the following findings with respect to the requirements of 760 CMR 56.04(1):

60% of area median income" for all thirty-seven rental units.

⁴³ The original Plantation II application stated that the project is to be constructed under the Department of Housing and Community Development's HOME program and/or DHCD's Housing Stabilization Fund. In public hearing following remand, the Applicant advised that this is still the case.

The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization

According to the application originally submitted and confirmed in public hearing following remand, SEHC ~~expects~~expected Plantation Apartments II LLC "to ultimately own and operate the Project." ~~The managing member of Plantation Apartments II LLC is Plantation Apartments II MM LLC, which has no managers; its office, agents and authorized signatories are SEHC and/or its president. SEHC states that~~However, the Applicant now proposes that SEHC own the Project (including both Plantation I and Plantation Apartments II LLC II, but excluding the House Lot) and ground lease it to an affiliate of Applicant as may be desirable to facilitate financing with low-income housing tax credits. SEHC state that both it and its affiliate groundtenant "will be controlled by (or under common control with [SEHC] and will be a qualified limited dividend organization within the meaning of Massachusetts General Laws Chapter 40B." ~~Separately, the Applicant has requested a finding that "Stow Elderly Housing Corporation, which is a qualifying nonprofit organization within the meaning of General Laws Chapter 40B or its designee, is eligible to receive a subsidy under a state or federal affordable housing program after a Comprehensive Permit is issued."~~

~~It is unclear whether the necessary finding under 760 CMR 56.04(1)(a) is sought only with respect to the Applicant, SEHC, or, in addition, with respect to Plantation Apartments II LLC, which currently owns a portion of the project site, and which SEHC states will ultimately own and operate the Project.~~The Board finds that that the Applicant, SEHC, is qualifying "nonprofit organization" for purposes of 760 CMR 56.04(1)(a), ~~and leaves it at that.~~

The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

The Project Eligibility Letter issued by DHCD on August 10, 2017, states that the Plantation II project has been approved under the Low Income Housing Tax Credit (LIHTC) program. Under DHCD regulations, this approval letter is sufficient to establish "fundability" for purposes of 760 CMR 56.04(1)(b); although as noted by the Project Eligibility Letter, it is not a guarantee that LITHC funds will be allocated to this Project.⁵

The Applicant shall control the site.

Although, Plantation Apartments II LLC ~~currently owns~~formerly owned most of the property that will become the Project Lot and the Well Lot. ~~The managing member of Plantation Apartments II LLC is Plantation Apartments II MM LLC, which has no managers; its office, agents and authorized signatories are SEHC and/or its president. A portion of the current~~

⁵~~In public hearing following remand, the Applicant advised that due to the project change involving the single family house (that it will remain part of the project, rather than being severed from the project site), the Applicant is pursuing any necessary modifications of its Project Eligibility letter with DHCD. For purposes of the hearing on remand, the original Project Eligibility letter and the Applicant's pursuit of any needed modification to it is sufficient to satisfy this Project Eligibility Requirement.~~

~~Plantation I parcel (Assessor's Map U-11, Parcel 13-1) abuts and will become part, the Applicant (SEHC) owns all of the Plantation II Project Lot; this property is owned by SEHC for the combined project.~~

The Board finds ~~that based on the control exercised by SEHC with respect to the other entities involved in the transactions proposed,~~ that the Applicant controls the site for purposes of 760 CMR 56.04(1)(c).

B. Findings on the need for affordable housing

Based on the application and hearing evidence, the Board made certain findings in the Plantation II decision regarding the need for affordable housing. The Board reiterates those findings here:

1. The Board finds that there is a critical, unmet need for affordable housing in the Town of Stow. Approximately 20% of households in Stow meet the income eligibility requirements for affordable housing.

2. The Board finds that the need for affordable units for the elderly is particularly acute.

3. The Board finds that Plantation I development is rented to capacity, and that there is a lengthy waiting list for apartments.

4. The Board finds that the need for affordable units for the elderly has increased substantially since the permitting and construction of the Plantation I development.

5. The Board finds that the production of additional units of affordable elderly housing was identified as a priority in the Town's most recent Housing Production Plan (HPP). The HPP noted that the need for such housing is set to *further* increase in the coming years as the population of older adults continues to grow. It is expected that by 2030, 29.7% of the population of Stow will be over the age of 65.

6. The Board finds that the Town of Stow has not achieved the 10% threshold identified in G.L. c. 40B, ss. 20. The Town currently has ~~185~~179 subsidized housing units on the Department of Housing and Community Development's Subsidized Housing Inventory (SHI), or ~~7.47.2%~~.

IV. 1982 Covenant

The 1982 comprehensive permit issued to SEHC for Plantation I is linked to a covenant entered into by SEHC with the Town of Stow (by and through its Selectmen) and recorded in the Registry of Deeds along with the comprehensive permit itself. This covenant, entitled "Approval with Covenant Contract," references a Definitive Subdivision Plan dated September 16, 1982 (also recorded); this Plan depicts the original Lot 1, Lot 2 and Parcel C on which Plantation I was permitted and constructed. The Plantation I comprehensive permit, the Covenant, and the Subdivision Plan must be read of a piece, as they are expressly linked, and together represent the

conditions under which the Board approved a project deviating from the Town's standards for roadways and access. The Board has reviewed the Plantation I Decision, the Covenant, and the Plan.

The Covenant, in addition to containing terms relating construction and maintenance of the project roadway, states:

"5. That Lots 1, 2, and C as shown on [the Subdivision] plan shall remain in common ownership and that Lots 1 and 2 as shown on such plan shall be used only in connection with the project described in [the comprehensive permit] Decision.

6. That no buildings shall be constructed on said lots except as provided for in said Decision and the plans."

By its terms, the Covenant is binding on the Stow Elderly Housing Corporation, and any successor with respect to the lots comprising Plantation I and depicted on the Subdivision Plan.

The revised [combined Plantation I and Plantation II project](#) entails ~~redrawing the lot lines of the 1982 Subdivision Plan; changes in ownership of the lots depicted; and~~ additional development of the subject property. The Board notes that ~~each of these changes~~ [this change](#) is in conflict with terms of the Covenant. The Board further notes that the Plantation I Decision limits construction to a maximum of 50 units; thus the development of an additional thirty-seven units in Plantation II violates the Plantation I comprehensive permit as well as the Covenant.

The Board finds that it does not have the authority to modify or waive the terms of the Covenant, as that agreement was entered into by SEHC and the Town, through the Selectmen. Such authority lies with the Selectmen. The Board finds, however, that it has an obligation to consider the concerns underlying the Covenant, as such concerns are also reflected in the Plantation I comprehensive permit; in particular, its limitation of the project to fifty units.

Given the Covenant terms noted above, as well as Plantation I's limit to 50 units, the Board believes that a chief concern is whether the roadway is adequate to provide safe access for the combined 87 units of Plantation I and II. A second concern is whether a density of 87 units is appropriate for the site; the 1982 permit and Covenant represent an express finding that it is not.

As discussed below, based on the information presented by the Applicant and the opinion of Town officials, the Board finds that the proposed access over Johnston Way will, with proposed improvements, be adequate to serve the combined Plantation I and II. The Fire Chief has stated that access to the project site will be sufficient; at 20 feet wide, the Fire Safety Code standard is met. As indicated by the Applicant's traffic study, vehicle trips associated with elderly housing are relatively limited and will neither overburden Johnston Way nor cause congestion at the Great Road intersection or neighboring intersections.

The Board further finds that while a limit to fifty units may have been reasonably imposed in 1982, there are valid and pressing grounds for increasing the number of units thirty-five years later. First, as stated above, the need for affordable housing for the elderly has

increased substantially since the permitting and construction of the Plantation I development. Plantation I is rented to capacity; there is a lengthy waiting list for apartments; and the production of additional units of affordable elderly housing was identified as a goal in the Town's most recent Housing Plan. The Board further finds that the provision of Town services to elderly residents will be efficiently accomplished by the co-location of Plantation I and Plantation II.

Based on the above, the Board believes it may, subject to the Selectmen's waiver of the 1982 Covenant provisions ~~pertaining to single ownership of site and~~ prohibiting further development of the site, and the Selectmen's execution of a new covenant or covenants, grant a comprehensive permit for the thirty-seven additional units of Plantation II, consistent with the purposes of the 1982 Covenant and Plantation I comprehensive permit. Certain conditions are imposed below so as to ensure such consistency.

V. Reorganization of parcels and Plan endorsement

Historical Background:

The original Plantation II application proposed the redrawing of certain lot lines to create a "house lot" and a "project lot," and further, to incorporate 1.2 ~~acres of~~ acres of the Plantation I parcel into the project lot – part of a land swap in which an equal-sized area owned by the Applicant would be incorporated into the Plantation I development.

The Remand Application for Plantation II application ~~proposes~~ proposed a single "Project Lot" containing the house and the Plantation II project site, but retains the 1.2 acre "land swap" between the Plantation I and Plantation II project."

The original Plantation II application requested the Board's endorsement of plans effectuating the proposed redivision and recombination of parcels. This Board noted in its original Plantation II decision that it does not have the authority to make such endorsement. While the Board may waive Planning Board rules and regulations under G.L. c. 40B - that is, local regulations - it cannot perform any function assigned to the Planning Board under the Subdivision Control Law. The Subdivision Control Law is a separate statutory scheme, outside G.L. c. 40B. Accordingly, the Board's approval of the Plantation II project was subject to the endorsement by the Planning Board, granting such relief as it deemed proper, of a Plan depicting the proposed reconfiguration of lot lines, such plan also depicting easements over the various parcels for the benefit of Plantation I and Plantation II, to ensure access to all components of the two developments.

While the Applicant's appeal was pending at the Housing Appeals Committee, the Applicant obtained the Planning Board's endorsement of the ANR plan identified above. This ANR plan redrew certain lot lines to accomplish an intended "land swap" accommodating the siting of the Plantation II well, but as discussed, did not create a separate "house lot." As depicted on the ANR plan, a 1.2-acre portion of the Plantation I parcel (A-1) ~~is anticipated~~ to would be combined with the Plantation II Project Lot, and a 1.2-acre portion of the Plantation II Well Lot (Parcel B-1) ~~is anticipated to~~ would be combined with the Plantation I parcel.

Current proposal in Modification Application:

Pursuant to the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant and that the House Lot be separated into a separate lot. In connection with the Modification Application, the Applicant submitted a variance plan to the Board which the Applicant has simultaneously filed with the Board in connection with a separate application for a variance allowing the House Lot to be established as a separate lot. If and when the variance is approved by the Board, the Applicant intends to convert the Variance Plan into an Approval Not Required (or ANR) plan and to submit it to the Town of Stow Planning Board for endorsement and recordation with the Middlesex Registry of Deeds (Southern District). The variance plan no longer shows the "land swap."

VI. Chapter 61B

Historical Background:

As noted in the Plantation II decision, a portion of the Well lot is currently classified and taxed under G.L. c. 61B as Recreational Land. The Applicant's ~~modified~~earlier proposed development ~~entails~~entailed a "land swap" under which a portion of this Chapter 61B land (shown as "Parcel B2" on the proposed record plan), ~~will be~~would have been conveyed and joined to the Plantation I parcel, and a portion of the Plantation I parcel ~~will be~~would have been conveyed and joined to the Well lot. The remainder of the Well lot (~~update as needed~~) shown as "Parcel B1" on the proposed record plan) ~~is~~was proposed to remain under Chapter 61B.

The Applicant ~~states~~stated that Parcel B1 ~~will~~would contain over five acres after the land swap, and ~~suggests~~suggested that the property ~~will~~would otherwise continue to be eligible to be classified and taxed as Recreational Land following the swap. Two wells, a pump house, and underground tanks (fenced) ~~will~~would be located on this parcel, served by a gravel service road from Great Road. ⁶⁴ The Board ~~finds~~found that the gravel road should be gated to preclude unauthorized vehicle access.

The Board ~~finds~~found that the question of whether the proposed development, as modified, will entail a change in use of the property - and thus whether the property will continue to be eligible to be classified and taxed as Recreational Land - is for the Assessor to determine. Application to the Assessor for such determination ~~is~~was a condition of this ~~approval~~Remand Decisions.

With respect to Parcel B2, and its intended conveyance and joining to the Plantation I parcel (and residential use), the Applicant ~~states~~stated that such transfer would constitute a sale

⁶⁴ The Town Assessor has advised that the land under the proposed improvements will be removed from Chapter 61B.

for other use (that is, other than Recreational use), triggering the Town's right of first refusal under Chapter 61B. The Applicant ~~notes~~noted that this right of first refusal is typically triggered by a notice of intent to sell, accompanied by a purchase and sale agreement representing a "bona fide offer" from a third party. In this case, the intended conveyance of Parcel B2 in this case does not fit the statute's requirements, especially where no purchase and sale agreement will be entered into until after any comprehensive permit is issued. As stated by the Applicant, "the timeline for the Owner to provide a notice of intent to sell to the Town of Stow is not at the present time when no comprehensive permit has yet been granted for the project but instead will be when the terms of the land swap are finalized."

The Board ~~finds~~found that the intended conveyance of Parcel B2 would appear to trigger the Town's right of first refusal, and that such right of first refusal will not ripen until such time that the "land swap" is to be executed. ~~The~~Under the Remand Decisions, the owner of Parcel B2 ~~shall~~was required to comply with all requirements of G.L. c. 61B. s. 9 with respect to such intended conveyance.

The Remand Decisions were subject to compliance by the Applicant, and all related parties and successors in interest, with all requirements of G.L. c. 61B.

Current proposal in the Modification Application:

As the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant and that the House Lot be separated into a separate lot there will no longer be a "land swap" and the land subject to Chapter 61B land (Parcels B1 and B2, as described above) are and will be in the single ownership of SEHC. As proposed before, the Chapter 61B land will be improved with two wells, a pump house, and underground tanks (fenced) would be located on this parcel, served by a gravel service road from Great Road. The Board continues to find that the gravel road should be gated to preclude unauthorized vehicle access.

The Board continues to find that the question of whether the proposed development, as modified, will entail a change in use of the property - and thus whether the property will continue to be eligible to be classified and taxed as Recreational Land - is for the Assessor to determine. Application to the Assessor for such determination is a condition of this decision.

As there will no longer be a transfer of the land, the discussion above around the implications of a conveyance under Chapter 61B are not applicable.

This approval ~~is~~otherwise remains subject to compliance by the Applicant, and all related parties and successors in interest, with all requirements of G.L. c. 61B.

VII. Water Resource Protection District

Historical Background:

In the Applicant's original Plantation II proposal in 2010, both the project building and the leaching fields of its Title 5 wastewater disposal system were located within the Water Resource Protection District (WRPD). The Board waived provisions of the Zoning Bylaw prohibiting uses generating the discharge of wastewater exceeding 110 gpd per 10,000 square feet within the WRPD. As noted above, the Board's waiver of the WRPD regulation was the basis for the Appeals Court reversal in the *Reynolds* decision.

Following the *Reynolds* decision, the Applicant's engineers redesigned the project. The application submitted in August of 2017 kept the project building within the WRPD, but moved the leaching fields outside the WRPD boundary. Abutters to the project site continued to express concerns regarding the safety of their wells given the proximity of the leaching fields to their properties. While the Board was vetting these concerns with the Town's Title 5 consultants, the Applicant decided to abandon plans for a Title 5 system serving Plantation II, and instead seek approval from the Department of Environmental Protection (DEP) for a Groundwater Discharge Permit for a facility to handle the combined wastewater flow of Plantation I and Plantation II. The current project design locates such facility outside the WRPD, and the Applicant's engineers assert that discharge from this facility will pose no threat to neighboring wells - in particular, no elevated levels of nitrogen at their property boundaries.

Due to the proximity of the proposed facility to the WRPD and to neighboring properties, the Board continued to be concerned with the safety of the design and whether the WRPD Bylaw provisions might safely be waived. Based on such concerns, the Board requested the opinion of its consultant as to whether, given the proximity of the proposed wastewater treatment facility to the WRPD, the facility poses a threat to health and safety. The response of the Board's consultant included the following opinion:

"The proposed Waste Water Treatment Facility is located outside of the WRPD, does not contain hazardous materials and will have routine inspections/maintenance by a licensed professional with reporting requirements to DEP. The effluent discharged from the Waste Water Treatment Facility will have a greater level of treatment and lower nitrogen levels than if both [Plantation I and II] lots used a Title 5 system similar to the existing system on Plantation Apartments.

The Groundwater Discharge Permit, when issued by DEP, will have strict testing requirements and standards and will typically require testing of monitoring wells. The effluent being discharged from the facility will be monitored for the nitrogen levels set in their permit and DEP has the jurisdiction to enforce these pre-determined levels.

It is the opinion of this office that the use of a properly permitted Waste Water Treatment Facility located outside of the WRPD will not pose a threat to health and safety. The implementation of this treatment facility may actually improve the water quality in the area."

Susan E. Carter, P.E. LEED-AP, Director of Engineering and President, Places, Associates, Inc.

Based on the above advice, the Board ~~finds~~[found](#) that it may, consistent with its responsibility to protect public health and safety, waive applicable provisions of the WRPD, and

approve this project, subject to the Applicant obtaining a Groundwater Discharge Permit for the combined treatment of Plantation I and II, and subject to such permit becoming final.

The Board ~~finds~~found that it may be useful to establish a baseline for existing nitrogen levels in the wells serving those properties abutting Assessor's Map U-11, Parcel 10. Accordingly, the Applicant ~~shall~~was required pay the costs of testing the well of any abutter to the project site, who so elects, to establish existing nitrogen levels only, prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

Current proposal in Modification Application:

In the Modification Application, the Applicant has proposed, based on input from the abutters as well as the Massachusetts Department of Environmental Protection in connection with permitting applications for the wastewater treatment facility and new wells, to move the leach field an even greater distance away from the WRPOD and the abutter's property lines. Given this increased distance and again relying on the advice of the Board's consultant, the Board finds that it may, consistent with its responsibility to protect public health and safety, waive applicable provisions of the WRPD, and approve this project, subject to the Applicant obtaining a Groundwater Discharge Permit for the combined treatment of Plantation I and II, and subject to such permit becoming final.

The Board finds that it may be useful to establish a baseline for existing nitrogen levels in the wells serving those properties abutting Assessor's Map U-11, Parcel 10A-A1. Accordingly, the Applicant shall pay the costs of testing the well of any abutter to Assessor's Map U-11, Parcel 10A-A1, who so elects, to establish existing nitrogen levels only, prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

VIII Waivers

Massachusetts General Laws c. 40B, §§20-23 empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers are "consistent with local needs" under the statute. The Board understands that reasonable waivers from local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G. L. c. 40B, §§ 20-23.

The Applicant included its August 10, 2017 application to the Board a "List of Exceptions to the Zoning Ordinances and other Local Land Use Requirements." This List was updated several times prior to the Board's Plantation II decision, in which the Board granted waivers and denied others. As part of the Remand Application, the Applicant ~~has~~ submitted a revised list of waivers, and modifications to waivers granted, reflecting proposed project changes. As part of the Modification Application, the Applicant has submitted a further revised list of waivers, and modifications to waivers granted, reflecting proposed project changes.

Under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic." Although the Applicant has not provided documentation to demonstrate that the project would be rendered uneconomic *but for* the specifically requested waivers and exceptions, the Board has reviewed the Applicant's waiver requests and has granted those that are consistent with protection of the general health, safety and welfare. The Board has denied requests that do not appear necessary to construct the Project. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted do not either alone, or in the aggregate, render the project uneconomic.

In the event that the Applicant or the Board determines that the final design of the project necessitates further waivers, the Applicant shall submit a written request for such waiver(s) to the Board. The Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.

The Board's decision as to each of the waivers and exemptions requested is set forth in **Revised Appendix B, Decision on Waivers**. Revised Appendix B to this Decision supersedes the waiver decisions in Appendix B to the ~~January 11, 2019 decision~~ [July 21, 2020 Remand Decisions for both Plantation 1 and Plantation 2](#). The only waivers granted are those expressly approved in Revised Appendix B. If a waiver is not expressly approved in Revised Appendix B, it is denied. All local regulations, other than those expressly waived in Revised Appendix B, are applicable to this project, including regulations for which no waiver was requested. No "plan waiver" is granted.

GRANT OF PERMIT

Subject to the conditions set for hereinafter, the Board grants this comprehensive permit (the "Permit") to the Applicant for the project proposed. The Board notes that 760 CMR 56.05(8)(d) provides that:

"The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic...."

In reaching this Decision, the Board has endeavored to ensure that the conditions herein do not render the project uneconomic and that the conditions are consistent with local needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

1. The Comprehensive Permit application was based on a Project Eligibility letter issued to the Applicant by DHCD on August 10, 2017. This Permit is conditional upon the execution of ~~one or more~~ [Regulatory Agreement\(s\) \(updating the existing Regulatory Agreement for Plantation I if DHCD deems appropriate\)](#) for this Permit by DHCD, the Applicant and the Town of Stow, and issuance of Final Approval from DHCD. Issuance

of Final Approval and the execution of such Regulatory Agreement(s) is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.

2. The Applicant shall comply with the terms of the Regulatory Agreement(s) and the Project Eligibility letter of August 10, 2017, to the extent applicable, prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit. No building permit shall be granted until the terms and conditions of the Regulatory Agreement(s) and project eligibility letter have been complied with in full, except for those which by their nature are to be complied with during and after construction of the project.

3. The Project shall conform to the following Plans:

A plan prepared by Dillis & Roy Civil Design Group entitled "Site Construction Plan, Plantation Apartments II", dated ~~May 5, 2017, as updated through November 14, 2018~~ ~~(ten August 29, 2022~~ (consisting of eleven sheets; see Appendix A)

A plan prepared by Dillis & Roy Civil Design Group entitled "Plan of Land in Stow, Massachusetts", dated October 12, 2022 (consisting of one sheet; see ~~Revised~~ Appendix A)

~~"Plantation Apartments II", dated July 7, 2017 (four sheets; see Revised Appendix A)[landscaping and lighting plans last revised Oct 26 2018]~~

~~"Plantation Apartments II", dated May 22, 2017 (six sheets; see Revised Appendix A)~~

~~"Plantation Apartments II — Exterior Elevations dated April 16, 2019 and~~

Plans prepared by The Architectural Team, Inc.² and Dillis & Roy Civil Design Group entitled "Plantation Apartments I & II — Building and Wall Section", dated ~~April 16, 2019 and prepared by the Architectural Team, Inc August 29, 2022~~ (consisting of twenty-one sheets; see Appendix A) (While building height, exterior elevations and building and wall sections were presented in separate plans before, with the Modification Application, this information is presented in sheets A4.01, A5.01, A5.20 and A5.21 of these plans).²

All of the above as further modified to comply with the requirements of this Decision ~~and/or the Plantation I Decision~~; as well as any changes deemed necessary by the Building Inspector, the Planning Department, or the Board's consultant for compliance with this ~~Decision, and/or with the Plantation I~~ Decision.

Conditions relating to Project Plans and Erosion Control

Prior to site disturbance, the following additions, changes and corrections shall be incorporated into revised Plan sets for the Project. No site disturbance shall occur until the Building Department and Highway Department, and, where noted, the Planning Department, with the advice of the Board's consultant, has reviewed and approved the Plans for compliance with the following conditions:

Barbara Huggins Carboni [BHC1]
Asking Planning to complete and finalize this list with the Applicant

4. The Applicant, and all agents thereof, shall comply with all conditions contained in Appendix C to this Decision pertaining to Plan Changes, which Appendix is expressly incorporated into this Decision.
5. The Drainage design shall be updated on the Plans to account for the widening of Johnston Way, which will increase the area of impervious surface at the site and the volume of water discharged. Additional flows shall be pre-treated.
6. ~~The~~Historically the Board required that the Plans shall be amended to include details regarding the proposed paving overlay of Johnston Way, including cross sections to indicate width; details as to any required tree removal; the extent of required grading and provisions to maintain adequate access to Plantation I during construction of road improvements; details and limits of repaving, as well as all sawcuts; and information on the geometry of Johnston Way and detail regarding the connection of Johnston Way to Great Road. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
7. Historically the Board required that Pavement Specifications on sheet C3.1 of the Plans shall be amended to reflect relevant work on the Plantation II site. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
8. Areas for snow storage along Johnston Way shall be defined on the Plans.
9. The Water System Plan shall be amended to include applicable notes and detail regarding installation of the water line in the wetland resource area by directional drilling. In addition, prior to site disturbance, the Applicant shall obtain an Order of Conditions from the Conservation Commission, providing a copy of such OOC to the Planning Department as agent for the Zoning Board of Appeals. With the Modification Application, the Board acknowledges that the Applicant submitted the Order of Conditions dated May 27, 2021 and recorded with the Middlesex County Registry of Deeds (Southern District) in Book 78062, Page 117 together with the Conservation Commission minutes date July 5, 2022 approving a slight change to the plan under the Order of Conditions. This submission satisfies this condition of the Decision. In the event that it proves infeasible or uneconomic to install the water line by directional drilling, the Applicant may obtain an amendment to the OOC by application to the Conservation Commission to proceed with direct installation, including temporary disturbance of the buffer of naturally occurring plant materials required by the Wetland Bylaw to be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet, without further application to the Board, provided that a copy of the amendment to the OOC shall be provided to the Planning Department as agent for the Board.
10. ~~Cut~~Historically the Board required that cut sheets for all exterior lighting fixtures utilized shall be reviewed and approved by the Planning Department as agent for the Zoning

Board of Appeals. ~~No~~ With the Modification Application, the Applicant has submitted updated plans with this information (Landscape plan 2.1). This condition is considered satisfied. The Board continues to require that no substitutions of lighting types are allowed to the fixtures unless found by the Planning Department to have equivalent illuminance specifications. Prior to issuance of the first building permit, confirmation of full cut-off fixtures shall be provided.

11. ~~The~~ Historically the Board required that the Lighting Plan shall be amended to reflect structural fixtures. Detail for the exterior light posts shall be added to the Plan, including height. With the Modification Application, the Applicant has submitted updated plans with this information (Landscape plan 2.1). This condition is considered satisfied.
12. ~~The~~ Historically the Board required that the Lighting Plan shall be amended to show an adequate level of light at the entrance and plaza areas, provided such increase from 1 foot candle remains in accordance with Section 3.8.1.5 of the Zoning Bylaw. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
13. ~~The~~ Historically the Board required that the Record Plan shall be amended to show all properties entailed in the Project, and the owners of all abutting properties shall be labeled. The Plans shall be stamped by a Registered Land Surveyor. With the Modification Application, the Applicant has submitted an updated Record Plan with this information. This condition is considered satisfied.
14. ~~The~~ Historically the Board required that the Plans shall be amended to include signage at turnaround areas labeled "no parking," to ensure access by emergency vehicles. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
15. ~~The~~ Historically the Board required that the Plans shall indicate compliance with ADA accessibility requirements at the building entrance. Additions to the Plan may include but not be limited to spot elevations for top and bottom of ramps and curbs, and tactile detection strips. With the Modification Application, the Applicant has submitted updated plans with this information. This condition is considered satisfied.
16. ~~The~~ Originally, the Board required that the Plans ~~shall~~ be amended to contain sufficient detail of the proposed grass paved shoulder along the western side of the building, so as to provide a determination of the shoulder's ability to withstand H-20 loading requirements, and to be maintained and accessible at full width year round. ~~Such~~ The Board also required that such detail shall be provided to the Fire Department for approval prior to commencement of construction. However, in the course of preparing plans for construction and the Modification Application, the Applicant received a request from the Fire Department to eliminate the proposed grass paved shoulder. Accordingly, the Project proposal no longer contemplates a grass paved shoulder and this condition is no longer required.

17. The Plan notes shall be modified to provide clarification regarding the conditions of the post development woods area.
18. Discrepancies on page 5 of the drainage report regarding the increase of runoff at analysis point C shall be resolved and resubmitted for review by Planning Department with advice of the Board's consultant. The current report indicates no increase in runoff and refers to table which shows negligible increase in runoff.
19. Seed mixes for erosion control shall be added to the Landscape plan for final review of appropriate species by the Board's consulting engineer.
20. Substantive revisions to the Project or the Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, Applicant desires to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR 56.00 et seq.
21. Where this Decision provides for the submission of plans or other documents to the Building Inspector, the Board, or its agent, a written response shall be provided the Applicant as to whether such plans or other documents are consistent with this Decision within forty-five days of receipt of such plans or other documents.

Regulatory Compliance: State, Federal and Local

22. The Project, and all construction, dwelling units, utilities, drainage, earth removal, and all related improvements of the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.
23. Development [of the Plantation II component](#) of the Project shall comply in all respects with the conditions contained in the Project Eligibility approval for the Project issued by DHCD dated August 10, 2017 and any modifications thereto.
24. The Project shall comply with all Town of Stow rules, regulations, and other local bylaws and requirements not expressly waived by this Decision.
25. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Stow Board of Health and the Massachusetts Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, private wells, resource protection, water supply and low impact development best management practices, except as expressly waived in this Decision.
26. Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.

27. The Project shall comply with the Town of Stow Zoning Bylaw in effect at the time of the Application, except as expressly waived in this Decision
28. Stormwater management systems shall meet the Guidelines of the Department of Environmental Protection Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised.
29. The total number of dwelling units in the Project shall be limited to a total of 87 units, including the 50 existing units of Plantation I and the 37 new units in Plantation II; provided, however, that the Applicant may apply to the Board to increase the number of dwelling units if and when public water service becomes available on Great Road at the ends of Johnston Way and DeVincent Drive.

Dwelling Units; Affordability in Perpetuity

30. ~~29.~~ The Plantation II component of the project shall consist of thirty-seven one-bedroom apartments, a community room, meeting room and management office located in a single three-story building, constructed in conformity with the Plans specified in Condition 3 above. For the avoidance of doubt, and the existing single family house ("House")- Plantation I component of the project shall continue as built pursuant to the original Plantation I decision, with the additional improvements permitted in this Decision.
31. ~~30.~~ All thirty-seven apartment units of the Plantation II component of the project shall be affordable, in perpetuity, to individuals and/or families earning no more than 60% of area median income, as calculated pursuant to formulas determined by the U.S. Department of Housing and Urban Development (HUD) or DHCD. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. ~~31.~~ For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision. All thirty-seven apartments shall be subject to a permanent affordable housing restriction conforming to G.L. c. 184, ss. 31-33 and in a form acceptable to the Town, and recorded in the Registry of Deeds. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision.
32. Said affordable housing restriction, enforceable by the Town of Stow, requiring that the affordable units of the Plantation II component of the Project remain affordable in perpetuity and in a form approved by the Board, shall be recorded senior to any liens on the Project locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision with the affordable housing restriction as required by DHCD.
33. None of the apartment units ~~may~~ of the Plantation II component of the Project may be rented to anyone other than a qualified tenant as required by this Decision and consistent

with the requirements of DHCD and other relevant state agencies governing the rental of below market rate units in a comprehensive permit project. To the extent allowed by law, the units shall be rented to persons meeting requirements for elderly housing or otherwise eligible for such housing. For the avoidance of doubt, the House shall not be considered part of the Project, nor subject to this decision or any ~~such requirement~~affordability restrictions with respect to the rental or sale of the House. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision with the affordable housing restriction as required by DHCD.

34. Upon the rental of an affordable dwelling, the Applicant or its successors or assigns shall provide written notice to the tenant that the premises are subject to an affordable housing restriction and is subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.

Management Documents – Operating Agreement

The Applicant shall prepare documents in a form that conforms to this Decision and applicable law designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.

35. ~~The~~Historically, the Board required that the Applicant shall prepare an Operating Agreement to be executed by appropriate representatives of the Plantation I and Plantation II projects, to govern the coordinated use, repair, and maintenance of the ways, facilities and infrastructure to be shared by the two developments. Such Operating Agreement shall ensure that the terms and conditions of this Decision and the Plantation I Decision are enforced. The Applicant shall provide a copy of the Operating Agreement, and any updates to the same, to the Planning Department. Note: this Operating Agreement is distinct from the Operation and Maintenance ("O & M") Plan described in Condition 38F below, which shall contain the specific operating and maintenance tasks to be shared by Plantation I and Plantation II pursuant to the Operating Agreement. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.
36. ~~The Operating Agreement and any subsequent~~All management documents shall provide that the Town of Stow shall not have any legal or financial responsibility for operation or maintenance of roadways, driveways, parking areas, stormwater management systems, snow plowing, landscaping, trash disposal or pick up, street lighting or other illumination, or other roadway infrastructure within the Project or the locus.

Profitability

37. The ~~Projects~~separate Plantation I and II components shall be limited to the profit allowed under the applicable Regulatory Agreement (the "allowable profit").

38. Any profit that is above the allowable profit pursuant to the [applicable](#) Regulatory Agreement, shall be returned to the Town of Stow for use by the Town. The profit limitation may be enforced the Town or its agencies, boards or commissions at anytime

39. Conditions Precedent to Commencement of Project

The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until the following conditions are satisfied

A. 1) The Board of Selectmen have waived those provisions contained in the 1982 Covenant, identified above in Section IV, pertaining to additional development of the site ~~and single ownership of the parcels~~; and 2) the Selectmen have executed a new Covenant or Covenants with SEHC with respect to all affected property associated with Plantation I and Plantation II, such Covenant(s) being binding on all successors in interest, and recorded in the Registry of Deeds.

B. The Building Inspector has reviewed and approved the Applicant's building, site and engineering construction drawings (Plans). These plans shall include the location and design (including materials to be used) of all retaining walls to be used within the project. Engineered plans for all retaining walls shall be submitted to and approved by the Building Inspector; boulder retaining walls shall not be used. The Building Inspector, on behalf of the Board shall review the Plans for conformance with this Decision; for compliance with local requirements not waived in the Permit; and with state and federal codes. The Applicant shall designate an Onsite Contractor, who shall demonstrate to the satisfaction of the Building Inspector that these Conditions Precedent have been satisfied, to the extent possible.

C. Site Plans fully compliant with the requirements of Section 4.4 through 4.17 of the Site Plan Rules and Regulations, except as waived in this decision, have been reviewed and approved (without the need for public hearing) by the Planning Department with the advice of the Board's consultant.

D. The Department of Environmental Protection (DEP) has issued a Groundwater Discharge Permit as proposed by the Applicant, serving Plantation II and Plantation I, and such Permit has become final.⁷⁵

E. The Planning Department, with the advice of the Board's consultant, has reviewed and approved a reasonable timeline submitted by the Applicant for commencement of

⁷⁵ The Applicant had originally proposed a wastewater disposal system serving Plantation II only, to be permitted under Title 5 by the Stow Board of Health. Approximately a year into the Board's review of the project, the Applicant decided to pursue approval by the Department of Environmental Protection of a Groundwater Discharge Permit to serve both Plantation I and II, necessitating plan changes. Should the Applicant, for any reason (including but not limited to failure to obtain a Groundwater Discharge Permit, or invalidation of any such Permit), seek to have the proposed development served by a system permitted under Title 5, the Applicant must apply to the Board for modification of this permit.

construction and completion of the proposed project (including infrastructure, utilities, and landscaping).

F. The Planning Department, with the advice of the Board's consultant has reviewed and approved an Operations and Maintenance Plan (without the need for public hearing). The Plan shall include, at a minimum, 1) maintenance during and post construction; and 2) perpetual maintenance to the extent required and monitoring of the drainage systems (routine and seasonal); the wastewater treatment facility and related sewage disposal elements; Johnston Way and the access driveway from Johnston Way to the Plantation II site; landscaping installed on the ~~Plantation II site~~ Project Lot; cisterns; and other project infrastructure. The Operations and Maintenance Plan shall bind the Applicant and all subsequent owners, ~~and, with respect to facilities common to Plantation I and Plantation II, shall bind the owner of Plantation I, as the owners of Plantation I and II have joint and several responsibility for maintenance and repair of such common facilities.~~ The Applicant shall provide a copy of the Operations and Maintenance Plan, and any updates to it, to the Planning Department.

G. The Planning Department, with the advice of the Board's consultant has reviewed and approved an erosion control plan to be in effect for the duration of site disturbance and project construction (without the need for a public hearing). Such plan shall include measures for extreme weather events. Such plan shall ensure that there is no erosion or sedimentation from the project site onto Johnston Way, Great Road, or abutting properties. The Onsite Contractor shall ensure compliance with the erosion control plan for the duration of site disturbance and project construction.

H. A pre-construction meeting shall be held with Town Staff, the Town's consultant and the on-site contractor to review the construction schedule, coordination with town officials for parking and stockpile of materials, erosion control methodology and construction schedule.

I. The Applicant, Monitoring Agent and DHCD have executed a Monitoring Agreement as provided by DHCD, if applicable.

J. The Applicant, the Town of Stow and DHCD have executed ~~a such~~ Regulatory Agreement ~~Agreements as required by DHCD~~, and said ~~Agreement has~~ Agreements have been recorded at the Middlesex Registry of Deeds. The Regulatory Agreement for the Plantation II component shall provide that all units shall be restricted as affordable in perpetuity to households with less than 60% of the applicable area median income. For the avoidance of doubt, the Plantation I component of the project shall continue with the affordability set forth in the original Plantation I decision and applicable Regulatory Agreement.

K. ~~The~~ Historically the Board required that the owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds all easements necessary to provide sufficient vehicular and pedestrian access to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from Great Road, including but not limited to easements over

Johnston Way and over the "Easement Area" depicted on the Plans on the Plantation I property. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

L. ~~The~~Historically the Board required that the owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds all easements necessary for installing and maintaining utilities serving Plantation II, including but not limited to the provision of water service to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from the Well site (Assessor's Map R-22, Parcel 1A-B), and all other easements necessary for the installation and use of utilities serving Plantation II, and for use of the cisterns on Plantation I property. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

M. ~~The~~Historically the Board required that the Applicant has executed and recorded in the Registry of Deeds any easements necessary to provide access to the Plantation I project owner with respect to any shared infrastructure, ways, and other project components. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

N. ~~The~~Historically the Board required that the Applicant has executed and recorded in the Registry of Deeds an easement over Assessor's Map U-10, Parcel 42, granted by the owner of such parcel, for the benefit of the Applicant, providing an access and utility easement for connection to the Pump House. In the Modification Application, the Applicant submitted a copy of this easement as recorded with the Registry of Deeds. This condition is considered satisfied.

O. The adequacy of the proposed well to provide service to the development has been confirmed.

~~P. The conveyances described in Section V above, providing for the combination of the described lots, shall be recorded in the Registry of Deeds, except that site disturbance and site work needed for the septic system and well, and other preconstruction work, which may take place as allowed by the Building Inspector.~~

40. Conditions Relating to Construction

A. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust, and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00 AM or on Saturday before 9:00 AM.

Construction activities shall cease by 6:00 PM on all days. No construction or activity whatsoever shall take place on Sunday. Interior work may be permitted at the discretion of the Building Inspector where necessary to address unforeseen circumstances.

B. The Applicant shall designate an Onsite Contractor who is responsible for all aspects of site work and project construction for the duration of the project. The name and phone numbers, including an emergency phone number, shall be provided to the Building Inspector and to the Planning Department as agent for the Board. The Onsite Contractor shall demonstrate to the Building Inspector's satisfaction that Conditions 4-18 have been satisfied.

C. Additional erosion control materials shall be readily available, either on site or adjacent sites) to allow replacement of measures as the project proceeds.

D. The Onsite Contractor shall comply with the approved Erosion Control Plan and develop a strategy for controlling the site in the event an extreme weather event is predicted.

E. Trees along the periphery of the limit of work shall be evaluated and removed if they are likely to sustain damage during construction (cut or filled root zone)

F. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the locus. No stumps or other debris shall be buried on the locus.

G. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations.

Administrative

41. The fees for consultant reviews incurred in the Zoning Board's review of this project application shall be the obligation of the Applicant. No site disturbance shall commence until all past fees are paid in full. The Applicant shall be responsible for fees incurred pursuant to consultant review of all project documents as provided in the Conditions above (including but not limited to review of Operations and Maintenance Plan; Erosion Control Plan; Building and site plans).
42. The existing tenants of Plantation I component shall continue to occupy their units uninterrupted while the work described and permitted in this Decision is in process and nothing herein shall be deemed to invalidate any existing certificates of occupancy for the Plantation I component. Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit for the Plantation II component until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, and all required inspections have been completed by the Fire Department. All cisterns indicated in the project plans, as well as

any other improvements required by the Fire Department, shall be installed and operational prior to the grant of any occupancy permit [for the Plantation II component](#).

43. Pursuant to the Project Eligibility letter issued by DHCD, following the issuance of certificates of occupancy, the Applicant shall submit to the Board and to the Stow Board of Selectmen the comprehensive permit project cost certification, [which the Applicant anticipates doing on a consolidated basis for both Plantation I and Plantation II components](#).

Conditions Relating to Johnston Way

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. In lieu of compliance with the provisions of Article 5, the Board imposes the following conditions to ensure public safety and to clarify the obligations of the parties.

44. The ~~owners of Plantation I and Howner~~ shall bear and have ~~joint responsibility and several responsibilities and obligations~~ [obligation](#) for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.
45. Johnston Way shall not be presented to Town Meeting for acceptance as a public way.
46. Johnston Way shall not service any further developments.

Conditions relating to Erosion Control

The Applicant and all agents thereof shall comply with all conditions contained in Appendix C to this Decision pertaining to Erosion Control.

Additional Conditions

47. Invasive Plants. No plants on the Commonwealth's Department of Agriculture "Invasive Plants" list (see <https://www.mass.gov/service-details/invasive-plants>) may be used in the landscaping or any other area of the proposed project.
48. No obligation accruing to Town. The Town shall at no time be responsible for the maintenance of, or repairs to any part of the project, or to the way(s) and easement areas serving the project; or any infrastructure or utilities associated with the project.
49. Shared responsibility for infrastructure. ~~The~~ [Historically the Board required that the](#) owner of the Plantation I project and the owner of the Plantation II project shall enter into contractual agreement(s), acceptable in form to Town Counsel and naming the Town of Stow as a beneficiary, whereby each accepts joint and several responsibility and liability for the performance and cost of: the maintenance and snow clearance for the shared portion so Johnston Way; the maintenance of the fire protection water cisterns; compliance with all maintenance and regulatory requirements for the sewer treatment

facility shared by the Plantation I project and Plantation II project. Further, the owner of the Plantation I project and the owner of the Plantation II project shall execute and record permanent easements, in forms satisfactory to Town Counsel, consistent with the installation, operation, and maintenance of all utilities as follows: an easement granted by the owners of Plantation I to the owners of Plantation II allowing the installation, operation, and maintenance of water service equipment within and across the Plantation I locus connecting the Plantation II well to the Plantation II project; an easement granted by the owners of Plantation II to the owners of Plantation I allowing the installation, operation, and maintenance of all elements of the shared wastewater treatment facility location on the Plantation I locus; and easements in Johnston Way allowing Plantation II to improve and use Johnston way for passage to and from the Plantation II project, and for the installation, maintenance, and repair of utilities serving the Plantation II project. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.

50. Community Preservation Act. The Applicant shall comply with any conditions associated with the funding provided through allocation(s) by the Town pursuant to the Community Preservation Act, and comply with the funding agreement of such allocation.
51. Lighting. All proposed lighting including freestanding fixtures or those attached to a structure shall comply with Section 3.8.1.5 (Exterior Lighting) of the Zoning Bylaw. Specification cut sheets for each type of fixture shall be provided to the Board or its agent.
52. Lighting. Lighting from the new parking area associated with the development shall be shielded from the Plantation I buildings and from abutters to the project site.
53. Johnston Way safety improvements. To improve pedestrian safety, historically the Board required that a center line shall be installed on Johnston Way and the access way connecting Johnston Way to the Plantation II site. With the Modification Application, the Applicant requested this requirement be waived due to the narrow width of the private drive. The Board has agreed to waive the requirement for a center line. Signage for pedestrians, conforming to Bylaw requirements and otherwise satisfactory to the Building Inspector, shall also be installed.
54. Cisterns. The ~~owners of Plantation I and Plantation II are jointly and severally~~ owner is responsible for the maintenance and repair of all cisterns on the Plantation I and Plantation II sites, including those cisterns currently in existence, and those to be constructed in conjunction with Plantation II. Plans and location of cisterns must be finalized prior to issuance of any Building Permit.
55. Wastewater Treatment Facility. The ~~owners of Plantation I and Plantation II are jointly and severally~~ owner is responsible for operation and maintenance of the wastewater

treatment facility to be constructed for service to both ~~projects~~the new development and existing development.

56. Other Common Facilities. ~~The~~Historically the Board required that the owners of Plantation I and Plantation II are jointly and severally responsible for maintenance and repairs to all other common facilities and common areas serving both projects, to be constructed in conjunction with this Permit, including but not limited to access roads and driveways, utilities, and signs. In the Modification Application, the Applicant proposes that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant, therefore these requirements are no longer applicable and are waived by the Board.
57. Decommissioning of existing septic system serving Plantation I. Prior to the issuance of any occupancy permit for the Plantation II component of the Project, the Applicant shall provide documentation to the Planning Department as agent for the Board, and to the Stow Board of Health, that the existing septic system has been decommissioned pursuant to the requirements and standards of the Massachusetts Department of Environmental Protection.
58. Reports. The Applicant shall provide to the Board of Health all periodic reports or monitoring reports pertaining to the wastewater treatment facility as deemed necessary by that Board.
59. Soil Testing. Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.
60. Testing of wells The Applicant shall pay the costs of testing the well of any owner of property abutting Assessor's Map U-11, Parcel 10;A-A1. who so elects, to establish existing nitrogen levels prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.
61. Inspections. Such reasonable inspections of the project site and construction by the Board's consultant, as needed to implement the terms of this Permit, shall be funded by the Applicant pursuant to s G.L. c 44, s. 53.
62. Agents, successors and assigns. All terms and conditions of this permit shall be binding upon the Applicant and all agents, successors and assigns.
- ~~63.-Zoning status of single-family house. For purposes~~the avoidance of zoning, including any alterations to the structure, the single family house on the Project Lot shall be treated as a pre-existing nonconforming structure subject to the protections of G.L. c. 40A, s. 6 and the Stow Zoning Bylaw. Alterations to the structure increasing any existing nonconformities, or creating any new nonconformities, shall require modification of this comprehensive permit, following

~~public hearing, with any appeal of the Board's decision on such modification request to be taken pursuant to G.L. c. 40A, s. 17, doubt, the House shall not be considered part of the Project, nor subject to this decision in any respect.~~

~~64. This decision is issued pursuant to a remand jointly requested by the parties from the Housing Appeals Committee, for hearing on certain agreed-upon issues. The Board finds these issues to be resolved herein through the revision of certain terms of the January 11, 2019 Decision. The Applicant, while reserving its rights, has represented that should such revisions be made, it would no longer pursue its appeal of certain other issues originally raised in the Housing Appeals Committee. Accordingly, should the Applicant appeal this Decision to the Housing Appeals Committee, all further relief granted in this decision shall be nullified, as well as all other alterations to the Board's January 11, 2019 decision, such that the January 11, 2019, is the only and operative permit.~~

CONCLUSION

This Permit is granted with conditions. This Decision was approved by the Stow Zoning Board of Appeals at a meeting of the Board on **DATE** [] pursuant to the following vote:

Jones:

Byron:

DeMore:

Dodd:

Golder:

NOTICE OF RIGHTS OF APPEAL

Any person aggrieved by this Decision may file an appeal pursuant to the provisions of General Laws, c. 40A, Section 17. Such appeal must be filed within twenty (20) days of the filing of this decision in the Office of the Town Clerk.

The Applicant has the right to appeal this Decision pursuant to the provisions of General Laws c. 40B, Section 22.

Copies of this Decision and notice thereof must be recorded by the Applicant at the Middlesex South Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must thereafter be filed with the Board of Appeals.

**THIS CONCLUDES THE DECISION OF THE BOARD OF THE APPEALS.
SIGNATURES OF THE BOARD MEMBERS ARE FOUND IMMEDIATELY BELOW.**

STOW ZONING BOARD OF APPEALS

Mark Jones, Chairman

William Byron

Andrew DeMore

Ernest Dodd

Leonard Golder

DATE: _____

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Description	KP-#723973-v1-STOW_bhc_final_Plantation_II_decision
Document 2 ID	iManage://imanager.kleinhornig.com/KHDOCS/833653/5
Description	#833653v5<imanager.kleinhornig.com> - SEHC Johnston Way 2022 Combined and Amended 40B Decision after Remand (Comprehensive Permit)
Rendering set	Standard

Legend:	
	<u>Insertion</u>
	Deletion
	<u>Moved from</u>
	<u>Moved to</u>
	Style change
	Format change
	Moved deletion
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	250
Deletions	149
Moved from	0
Moved to	0
Style changes	0
Format changes	0

Total changes	399
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COMBINED AND REVISED PLANTATION I AND II DECISION

REVISED APPENDIX A: LIST OF EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

A plan prepared by Dillis & Roy Civil Design Group entitled "Site Construction Plan, Plantation Apartments II", dated August 29, 2022, consisting of eleven sheets, indexed as follows:

Sheet C1.0	Title Sheet
Sheet C1.1	Existing Conditions
Sheet C2.0	Layout Plan
Sheet C2.1	Layout Details
Sheet C3.0	Grading & Drainage Plan
Sheet C3.1	Grading & Drainage Plan 2
Sheet C4.0	Utilities Plan
Sheet C4.1	Utilities Plan 2
Sheet C5.0	Erosion Control
Sheet C6.0	Water System Plan
Sheet C7.0	Wastewater

A plan prepared by Dillis & Roy Civil Design Group entitled "Plan of Land in Stow, Massachusetts", dated October 12, 2022, consisting of one sheet.

Plans prepared by The Architectural Team, Inc. and Dillis & Roy Civil Design Group entitled "Plantation Apartments I & II", dated August 29, 2022, consisting of twenty-one sheets, indexed as follows:

Sheet T0.01	Project Cover
Sheet C1.0	Title Sheet
Sheet C1.1	Existing Conditions
Sheet C2.0	Layout Plan
Sheet C2.1	Layout Details
Sheet C3.0	Grading & Drainage Plan
Sheet C3.1	Grading & Drainage Plan 2
Sheet C4.0	Utilities Plan
Sheet C4.1	Utilities Plan 2
Sheet C5.0	Erosion Control
Sheet C6.0	Water System Plan
Sheet C7.0	Wastewater
Sheet A1.01	Overall Floor Plans
Sheet A1.01b	Ground Floor Slab Plan
Sheet A1.02	Overall Floor Plans
Sheet A1.03	Wastewater Treatment Plant Plans & Elevations
Sheet A2.10	Enlarged Unit Plans
Sheet A4.01	Building Elevations
Sheet A5.01	Building Sections
Sheet A5.20	Typical Wall Sections
Sheet A5.21	Typical Wall Sections

Plans prepared by The Architectural Team, Inc., Dillis & Roy Civil Design Group and Ryan Associates entitled "Plantation Apartments I & II", dated August 29, 2022, consisting of twenty-eight sheets, indexed as follows:

Sheet T0.01	Project Cover
Sheet C1.0	Title Sheet
Sheet C1.1	Existing Conditions
Sheet C2.0	Layout Plan
Sheet C2.1	Layout Details
Sheet C3.0	Grading & Drainage Plan
Sheet C3.1	Grading & Drainage Plan 2
Sheet C4.0	Utilities Plan
Sheet C4.1	Utilities Plan 2
Sheet C5.0	Erosion Control Plan
Sheet C6.0	Water System Plan
Sheet C7.0	Wastewater
Sheet L1.0	Landscape Plan (Plantation I)
Sheet L2.0	Lighting Plan (Plantation I)
Sheet L2.1	Lighting Cut Sheets (Plantation I)
Sheet L1.0	Landscape Plan (Plantation II)
Sheet L2.0	Lighting Plan (Plantation II)
Sheet L2.1	Lighting Cut Sheets (Plantation II)
Sheet L3.0	Landscape Details (Plantation II)
Sheet A1.01	Overall Floor Plans
Sheet A1.01b	Ground Floor Slab Plan
Sheet A1.02	Overall Floor Plans
Sheet A1.03	Wastewater Treatment Plant Plans & Elevations
Sheet A2.10	Enlarged Unit Plans
Sheet A4.01	Building Elevations
Sheet A5.01	Building Sections
Sheet A5.20	Typical Wall Sections
Sheet A5.21	Typical Wall Sections

A plan prepared by Dillis & Roy Civil Design Group entitled "Variance Plan", dated November 1, 2022, consisting of one sheet.

**COMBINED AND REVISED PLANTATION I AND II DECISION
REVISED APPENDIX B: DECISION ON WAIVERS**

The Board GRANTS and DENIES the requested waivers as follows:

Zoning Bylaw

Zoning Bylaw Section 4.1.1 This provision prohibits construction or use of land or building in violation of Zoning Bylaw or any Town Bylaw.

The Board grants this waiver in part, only as specifically provided below.

Zoning Bylaw Section 4.1.2. This provision prohibits the construction of more than one building on a lot.

The Board grants this waiver with respect to construction of the Project building.

Zoning Bylaw Section 4.3.1 Lot area

The Board grants this waiver.

Zoning Bylaw Section 4.4 (Table of Dimensional Requirements).

Project Lot

Dimension	Required	Provided	Waiver Granted
Minimum Lot Area	65,340 sq. ft. per unit x 38	882,750 SF	*
Minimum Frontage	200 ft.	75 ft.	125 ft.
Minimum front setback (Project Building)	30 ft	629.63 ft.	None required
<u>Minimum rear setback</u>	40 ft	224 ft to closest building (Building C)	None required
Minimum side setback	25 ft.	49.6 ft. to closest building (Building A)	None Required
Minimum open space	10%	85%	None Required

Maximum Height

35

35

None Required

*The Board waives these requirements as inapplicable to the project.

Zoning Bylaw Section 7.3.3. Applicant requests relief from the minimum number of parking spaces per unit/square foot, and requests approval for 47 spaces for the Plantation II development and approval to increase the parking for the Plantation I development from 45 spaces to 52 spaces.

The Board finds 47 spaces for Plantation II to be sufficient for the uses proposed and grants relief from the Bylaw requirement of two spaces per dwelling unit and approves the increase of spaces for Plantation I from 45 spaces to 52 spaces.

Zoning Bylaw Section 3.2 Applicant requests relief from this section as to Plantation II (with continuing relief from the original Plantation I decision applying to Plantation I), which describes purpose of District as intended for typical rural, single family residential and noncommercial uses, to allow the multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

Zoning Bylaw Section 3.2.1. Applicant requests relief from this section as to Plantation II (with continuing relief from the original Plantation I decision applying to Plantation I), which defines permitted Residential District Uses, to allow multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

Zoning Bylaw Section 3.8.1.3. Noise. Applicant requests relief from this section, which limits noise generated on any lot. Applicant requests relief "to the extent that it is more restricted than applicable state requirements.

The Board denies this waiver. In the event that the development is not in conformance with Section 3.8.1.3 of the Zoning Bylaw, the Applicant or owner shall provide noise abatement options for the Building Inspector's approval. Approval of such noise abatement options by the Building Inspector shall constitute compliance with this Bylaw section and this Permit.

Zoning Bylaw Section 3.8.1.10. Erosion Control. Applicant requests, as relief, a waiver from the requirement to obtain a special permit from the Planning Board regarding the erosion control measures regarding the total area of site disturbance of approximately 22,190 square feet with respect to the Plantation I component, 138,350 square feet with respect to the Plantation II component and an additional approximately 39,000 square feet which was already disturbed on the Premises and easement area in connection with the roadway and landing in order to conduct drilling and testing for the new wells, and the clearing and regrading of the same approximate square footage.

The Board grants a waiver only from the requirement to obtain a special permit from the Planning Board. The Board denies any additional waiver or relief. The project must comply with all other requirements of the Zoning Bylaw with respect to erosion control.

Zoning Bylaw Section 3.8.1.10.7. Applicant requests an exception from the requirement that a copy of the Stormwater Prevention Plan and Notice of Intent filed with EPA to be submitted to the Planning Board.

The Board grants this waiver with respect to filing these items with the Planning Board. Copies of the relevant documents shall be provided to the Planning Department.

Zoning Bylaw Section 3.10 Table of Principal Uses. Applicant requests relief from the requirements of this Table, which require a special permit for multi-family use.

The Board grants this waiver.

Zoning Bylaw Section 4.3.2.4. Lot Width. Originally the Applicant sought relief from this requirement with respect to Parcels A and A1. The Board granted this waiver.

With the proposed reconfiguration of the Project Lot, this waiver is no longer necessary. The Applicant no longer seeks this relief from the Board.

Zoning Bylaw Section 4.3.2.5. Lot Shape. Originally, the Applicant sought relief from this requirement, which prohibits the laying out of a lot having an index of regularity below 0.4, with respect to the combined Lot 1 and Parcels A and A1.

The Board granted this waiver.

With the proposed reconfiguration of the Project Lot, the index of regularity for the Project Lot is 0.41, therefore this waiver is no longer necessary. The Applicant no longer seeks this relief from the Board.

Zoning bylaw Section 4.3.2.6. Front Yards. Applicant originally sought relief from this requirement, which specifies means of measuring distance from buildings to lot frontage. Applicant originally sought "determination from the ZBA that the front lot line [of Parcel A and A1] consists of the three segments running along the northern edge of Parcel A towards which the front entrance to the Elderly Housing is oriented."

With the proposed reconfiguration of the Project Lot, this determination is no longer necessary, as the lot frontage for the combined Project Lot is the 75 feet along Great Road. The Applicant no longer seeks this relief or determination from the Board.

Zoning Bylaw Sections 5.2.1.1.2 and 5.2.2.3. Water Resource Protection District. Applicant requests relief from this section, which prohibits uses generating onsite sewage disposal exceeding 110 gallons per day per 10,000 square feet of lot area.

The significance of this Bylaw is discussed in Section VII of the decision. While the Project's sewage disposal area for the wastewater treatment facility intended to serve Plantation I and Plantation II is located outside the WRPD boundary, the Plantation I and proposed Plantation II buildings, themselves, and thus the "use," lie within the WRPD boundary. Interpreting the Bylaw conservatively, which the Board believes it must, the Board finds this section of the Bylaw applicable to the Project. Based on the advice of its consultant, the Board finds that to the extent a waiver of these Bylaw provisions is necessary, such provisions may be waived consistent with health and safety.

The Board grants this waiver.

Zoning Bylaw Section 5.2.1.1.8. Water Resource Protection District. Originally, the Applicant sought relief from this section, which prohibits uses with impervious surfaces of greater than 10% of lot area, or 5000 square feet, whichever is greater as to the Plantation II development. Originally the Plantation II Project parcel would have rendered impervious 46,711 square feet out of 163,684 square feet (28.5%).

The Board's consultant found the above to be satisfactory for the sites, notwithstanding the Bylaw limitations.

The Board granted this waiver.

In connection with the Modification Application, the Applicant seeks relief from this section, as to the combined Plantation I and II development. The Project parcel will render impervious 111,714 square feet out of 882,750 square feet (12.65%). Detailed calculations for the combined Project are as follows:

Existing impervious surface area is 52,906 square feet.
Proposed additional impervious surface area is 58,808 square feet.
Total impervious surface area proposed is 111,714 square feet.

Percentage of existing impervious surface area is 5.99%.
Percentage of proposed additional impervious surface area is 6.66%.
Percentage of total impervious surface area proposed is 12.65%.

Based on the earlier finding of the Board's consultant and the fact that the percentage of impervious surface is reduced, the Board grants this waiver.

Zoning Bylaw Section 6.2.5. Joint Responsibility of Lot owners sharing common drive. The Applicant seeks relief from this provision, which requires owners of lots bordering common drive to have joint and several responsibility for maintenance, so as to allow the responsibility for maintenance of Johnston Way to be shared "by owners of Parcel A and A1 and the Neighboring lot only" (that is, by whomever ultimately owns Plantation I and Plantation II), now anticipated to be the Applicant.

The Board grants this waiver.

Zoning Bylaw Section 6.2.6. Applicant seeks relief from this section which requires that an Erosion Control and Sedimentation Plan, in accordance with Planning Board Rules and Regulations governing the same, be submitted to and approved by the Planning Board.

The Board grants this waiver. The Erosion Control and Sedimentation Plan shall be submitted to the Planning Department.

Zoning Bylaw Section 6.2.7. The Applicant seeks relief from this section, which provides that "as part of an approved subdivision or special permit granted by the Planning Board, the number of lots served by a common drive may be increased to five."

The Board grants this waiver, to the extent the lots served are those depicted in the approved plans. No additional lots or units may be served.

Zoning Bylaw Section 6.3. Signs. The Applicant seeks a determination from the ZBA that Section 6.3. is waived in its entirety to permit installation of a sign, subject to the Building Commissioner's reasonable review and approval."

The Board denies this request for waiver of the Bylaw Section in its entirety. The Board waives the Bylaw only to the extent necessary to allow for a "Plantation II" sign to be located offsite, on Johnston Way, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 6.3.4 Off-Site Signs. The Applicant seeks relief from this section, which allows off-site signs only for seasonal agriculture and limits the size of signs. The Applicant seeks a waiver "to allow the sign to be located off-site in a location subject to the Building Commissioner's review and approval."

The Board grants this waiver only to the extent necessary to allow for a "Plantation II" sign to be located offsite, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 7.7.1. Parking. Originally Applicant sought relief from this section, which provides that no parking spaces may be located within 30 feet of the front lot line and within 10 feet of side or rear lot lines.

The Board granted this waiver. With respect to the lot line(s) shared with Plantation I property, the parking spaces shall be located no closer than eight (8) feet to the lot lines.

With the proposed reconfiguration of the Project Lot, this waiver is no longer necessary, as Plantation I and Plantation II are on a combined Project Lot in single ownership by the Applicant. The Applicant no longer seeks this relief or determination from the Board.

Zoning Bylaw Section 7.7.2. Access Driveways. Applicant seeks relief from this section which requires, among other things, an access driveway of 24 feet in width, to allow for Johnston Way, widened to between 18 and 22 feet.

The Board grants this waiver, provided that the width shall be 20 feet, noting that a width of 20 feet has been deemed adequate by the Fire Chief.

Zoning Bylaw Section 7.7.5. Interior Area Landscaping Requirements. The Applicant seeks relief from this section which requires a minimum of 10% of interior area to be planted as landscaped islands, to allow parking areas to be built as designed and shown on plan.

The Board grants this waiver.

Zoning Bylaw Section 8.9.2.1. Inclusion of Affordable Housing. The Applicant requests relief from this section, which requires among other things a special permit from the Planning Board for development or division of land resulting in creation of six or more units

The Board grants this waiver.

Zoning Bylaw Section 9.3.3.5. Site Plan Approval - establishment of area for vehicle parking, loading storage or vehicular access. The Applicant seeks waiver of this section to allow for parking and vehicle access areas to be built as designed and shown on the Plans without site plan approval.

The Board grants this waiver, to the extent the Bylaw would require a separate site plan review and approval process. Preliminary site plans have been reviewed by the Board and its consultants, and the final Site Plans must be reviewed and approved by the Board's consultant or the Planning Department prior to site disturbance.

Other regulations

Subdivision Control regulations

1) A waiver is sought from the ZBA with respect to the fees listed in the Subdivision Control Regulations in connection with the Project.

The Board grants this waiver.

2) A waiver is sought from the requirement of Section 5 of the Subdivision Control Regulations regarding performance guarantees. Developer proposes to provide a guaranty with respect to construction-related damage of public roads adjacent to the Site.

The Board denies this waiver. The applicant shall provide a performance guaranty in accordance with Section 5 for the Subdivision Rules and Regulations, such as a Restrictive Covenant, proper bond, deposit of money or negotiable securities, or funds retained by a lender.

3) A waiver is sought from the administrative requirements of Section 10.4, Mandatory Notice Prior to Commencement of Construction Work, Section 10.5, Inspections, and Section 10.8, Completion within Eight Years.

The Board denies waivers of Sections 10.4 and 10.5 of the Subdivision Rules and Regulations. The Board grants a waiver from Section 10.8 of the Subdivision Rules and Regulations.

Board of Health

Leaching Area Requirement Regulation.

The Applicant requests that the ZBA "confirm [the Applicant's] understanding or make the determination that the Board of Health's Leaching Area Regulation, which requires sewage disposal system leaching areas to have an effective square footage to handle 150% of the estimated design flow (as defined by Title 5) only applies to Title 5 sewage disposal systems and is inapplicable to the Project which will be installing a [wastewater] discharge facility to be permitted by the State Department of Environmental Protection."

The Board finds that the referenced regulation is inapplicable to the Project, provided that a wastewater discharge permit is issued.

General Bylaws

Acceptance and Repairs of Private Roads, Section 1.

The Applicant requests a waiver of this provision, specifically, that "with respect to Johnston Way and the access driveway, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway are not private roads or ways subject to Article 5 of the General Bylaws. If the ZBA determines that Johnston Way and the access driveway are private roads or ways subject to Article 5 of the General Bylaws, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway, although not meeting all of the requirements of Article 5, are of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon and served thereby and accordingly waive strict compliance with Article 5 of the General Bylaws to construct the Project as shown on the Plans:."

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. To the extent that Johnston Way and the access driveway do not conform to the requirements of Article 5 of the General Bylaws, relief is granted, only upon compliance with the following conditions:

1) The owners of Plantation I and II shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of the lots, and to

provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.

2) There shall be no site disturbance until a restriction or covenant to run with the land has been approved by the Planning Department in a form satisfactory to assure compliance with this provision and a copy of the document received by the Building Inspector.

3) The above-described restriction or covenant shall include a provision that the way shall not be presented to Town Meeting for acceptance as a public way.

4) As proposed, the road shall not service any further developments.

Wetlands Bylaw

Section 5.4(a) General Performance Standards Applying to Any Area

The Applicant requests a waiver from this provision, stating that "[w]ith respect to the proposed water line that will cross a wetland area on the Neighboring [Plantation I] lot, the Developer seeks a temporary waiver from the ZBA from the requirement that an undisturbed buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet only in the event it proves infeasible to install the water line without disturbing said buffer.

At the time of the hearing for the Remand Decision, the Applicant had not yet prepared plans indicating where the proposed water line would be installed, nor had it established the existing conditions that would determine what methods would be used for such installation. Lacking this essential information, the Board had no basis on which to grant a waiver. The waiver was denied, without prejudice for the Applicant to return to the Board to request a modification of the Permit based on such information as would enable the Board to make such determination.

In connection with the Modification Application, the Applicant submitted to the Board the plans indicating where the proposed water line will be installed together with the Order of Conditions issued by the Stow Conservation Commission, as amended. Because there continues to be uncertainty about the feasibility and cost of the proposed directional drilling which will not be resolved until drilling commences, the Applicant has renewed the request for a temporary waiver from the ZBA from the requirement that an undisturbed buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet only in the event it proves infeasible or uneconomic to install the water line without disturbing said buffer.

The Board [grants/denies] this waiver.

COMBINED AND REVISED PLANTATION I AND II DECISION
REVISED APPENDIX B: DECISION ON WAIVERS

The Board GRANTS and DENIES the requested waivers as follows:

Zoning Bylaw

Zoning Bylaw Section 4.1.1 This provision prohibits construction or use of land or building in violation of Zoning Bylaw or any Town Bylaw.

The Board grants this waiver in part, only as specifically provided below.

Zoning Bylaw Section 4.1.2. This provision prohibits the construction of more than one building on a lot.

The Board grants this waiver with respect to construction of the Project building.

Zoning Bylaw Section 4.3.1 Lot area

The Board grants this waiver.

Zoning Bylaw Section 4.4 (Table of Dimensional Requirements).

~~Dimension Required Provided Waiver Granted~~

~~Minimum side setback:~~

~~Plantation I building E 25 ft. 11.5 ft. 13.5 ft.~~

~~Plantation I building F 25 ft. 10.5 ft. 14.5 ft.~~

Project Lot

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>	<u>Waiver Granted</u>
<u>Minimum Lot Area</u>	<u>65,340 sq. ft.</u> <u>per unit x 38</u>	<u>882,750 SF</u>	<u>*</u>
<u>Minimum Frontage</u>	<u>200 ft.</u>	<u>75 ft.</u>	<u>125 ft.</u>
<u>Minimum front setback (Project Building)</u>	<u>30 ft</u>	<u>629.63 ft.</u>	<u>None required</u>

<u>Minimum rear setback</u>	<u>40 ft</u>	<u>224 ft to closest building (Building C)</u>	<u>None required</u>
<u>Minimum side setback</u>	<u>25 ft.</u>	<u>49.6 ft. to closest building (Building A)</u>	<u>None Required</u>
<u>Minimum open space</u>	<u>10%</u>	<u>85%</u>	<u>None Required</u>
<u>Maximum Height</u>	<u>35</u>	<u>35</u>	<u>None Required</u>

*The Board waives these requirements as inapplicable to the project.

Zoning Bylaw Section 7.3.3. Applicant requests relief from the minimum number of parking spaces per unit/square foot, and requests approval for 47 spaces for the Plantation II development and approval to increase the parking for the Plantation I development from 45 spaces to 52 spaces.

The Board finds 47 spaces for Plantation II to be sufficient for the uses proposed and grants relief from the Bylaw requirement of two spaces per dwelling unit and approves the increase of spaces for Plantation I from 45 spaces to 52 spaces.

Zoning Bylaw Section 3.2 Applicant requests relief from this section as to Plantation II (with continuing relief from the original Plantation I decision applying to Plantation I), which describes purpose of District as intended for typical rural, single family residential and noncommercial uses, to allow the multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

Zoning Bylaw Section 3.2.1. Applicant requests relief from this section as to Plantation II (with continuing relief from the original Plantation I decision applying to Plantation I), which defines permitted Residential District Uses, to allow multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

Zoning Bylaw Section 3.8.1.3. Noise. Applicant requests relief from this section, which limits noise generated on any lot. Applicant requests relief "to the extent that it is more restricted than applicable state requirements.

The Board denies this waiver. In the event that the development is not in conformance with Section 3.8.1.3 of the Zoning Bylaw, the Applicant or owner shall provide noise abatement options for the Building Inspector's approval. Approval of such noise abatement options by the Building Inspector shall constitute compliance with this Bylaw section and this Permit.

Zoning Bylaw Section 3.8.1.10. Erosion Control. Applicant requests, as relief, a waiver from the requirement to obtain a special permit from the Planning Board regarding the erosion control measures regarding the total area of site disturbance of approximately 22,190 square feet with respect to the Plantation I component, 138,350 square feet with respect to the Plantation II component and an additional approximately 39,000 square feet which was already disturbed on the Premises and easement area in connection with the roadway and landing in order to conduct drilling and testing for the new wells, and the clearing and regrading of the same approximate square footage.

The Board grants a waiver only from the requirement to obtain a special permit from the Planning Board. The Board denies any additional waiver or relief. The project must comply with all other requirements of the Zoning Bylaw with respect to erosion control.

Zoning Bylaw Section 3.8.1.10.7. Applicant requests an exception from the requirement that a copy of the Stormwater Prevention Plan and Notice of Intent filed with EPA to be submitted to the Planning Board.

The Board grants this waiver with respect to filing these items with the Planning Board. Copies of the relevant documents shall be provided to the Planning Department.

Zoning Bylaw Section 3.10 Table of Principal Uses. Applicant requests relief from the requirements of this Table, which require a special permit for multi-family use.

The Board grants this waiver.

Zoning Bylaw Section 4.3.2.4. Lot Width. Originally the Applicant sought relief from this requirement with respect to Parcels A and A1. The Board granted this waiver.

With the proposed reconfiguration of the Project Lot, this waiver is no longer necessary. The Applicant no longer seeks this relief from the Board.

Zoning Bylaw Section 4.3.2.5. Lot Shape. Originally, the Applicant sought relief from this requirement, which prohibits the laying out of a lot having an index of regularity below 0.4, with respect to the combined Lot 1 and Parcels A and A1.

The Board granted this waiver.

With the proposed reconfiguration of the Project Lot, the index of regularity for the Project Lot is 0.41, therefore this waiver is no longer necessary. The Applicant no longer seeks this relief from the Board.

Zoning bylaw Section 4.3.2.6. Front Yards. Applicant originally sought relief from this requirement, which specifies means of measuring distance from buildings to lot frontage. Applicant originally sought "determination from the ZBA that the front lot line [of Parcel A and

A1] consists of the three segments running along the northern edge of Parcel A towards which the front entrance to the Elderly Housing is oriented."

With the proposed reconfiguration of the Project Lot, this determination is no longer necessary, as the lot frontage for the combined Project Lot is the 75 feet along Great Road. The Applicant no longer seeks this relief or determination from the Board.

Zoning Bylaw Sections 5.2.1.1.2 and 5.2.2.3. Water Resource Protection District. Applicant requests relief from this section, which prohibits uses generating onsite sewage disposal exceeding 110 gallons per day per 10,000 square feet of lot area.

The significance of this Bylaw is discussed in Section VII of the decision. While the Project's sewage disposal area for the wastewater treatment facility intended to serve Plantation I and Plantation II is located outside the WRPD boundary. ~~The, the~~ Plantation I ~~buildings (as well as the~~ and proposed Plantation II ~~building)~~ buildings, themselves, and thus the "use," lie within the WRPD boundary. Interpreting the Bylaw conservatively, which the Board believes it must, the Board finds this section of the Bylaw applicable to the Project. Based on the advice of its consultant, the Board finds that to the extent a waiver of these Bylaw provisions ~~are~~ is necessary, such provisions may be waived consistent with health and safety.

The Board grants this waiver.

Zoning Bylaw Section 5.2.1.1.8. Water Resource Protection District. Originally, the Applicant sought relief from this section, which prohibits uses with impervious surfaces of greater than 10% of lot area, or 5000 square feet, whichever is greater as to the Plantation II development. Originally the Plantation II Project parcel would have rendered impervious 46,711 square feet out of 163,684 square feet (28.5%).

The Board's consultant found the above to be satisfactory for the sites, notwithstanding the Bylaw limitations.

The Board ~~grants~~ granted this waiver.

In connection with the Modification Application, the Applicant seeks relief from this section, as to the combined Plantation I and II development. The Project parcel will render impervious 111,714 square feet out of 882,750 square feet (12.65%). Detailed calculations for the combined Project are as follows:

Existing impervious surface area is 52,906 square feet.

Proposed additional impervious surface area is 58,808 square feet.

Total impervious surface area proposed is 111,714 square feet.

Percentage of existing impervious surface area is 5.99%.

Percentage of proposed additional impervious surface area is 6.66%.

Percentage of total impervious surface area proposed is 12.65%.

Based on the earlier finding of the Board's consultant and the fact that the percentage of impervious surface is reduced, the Board grants this waiver.

Zoning Bylaw Section 6.2.5. Joint Responsibility of Lot owners sharing common drive. The Applicant seeks relief from this provision, which requires owners of lots bordering common drive to have joint and several responsibility for maintenance, so as to allow the responsibility for maintenance of Johnston Way to be shared "by owners of Parcel A and A1 and the Neighboring lot only" (that is, by whomever ultimately owns Plantation I and Plantation II), now anticipated to be the Applicant.

The Board grants this waiver.

Zoning Bylaw Section 6.2.6. Applicant seeks relief from this section which requires that an Erosion Control and Sedimentation Plan, in accordance with Planning Board Rules and Regulations governing the same, be submitted to and approved by the Planning Board.

The Board grants this waiver. The Erosion Control and Sedimentation Plan shall be submitted to the Planning Department.

Zoning Bylaw Section 6.2.7. The Applicant seeks relief from this section, which provides that "as part of an approved subdivision or special permit granted by the Planning Board, the number of lots served by a common drive may be increased to five."

The Board grants this waiver, to the extent the lots served are those depicted in the approved plans. No additional lots or units may be served.

Zoning Bylaw Section 6.3. Signs. The Applicant seeks a determination from the ZBA that Section 6.3. is waived in its entirety to permit installation of a sign, subject to the Building Commissioner's reasonable review and approval."

The Board denies this request for waiver of the Bylaw Section in its entirety. The Board waives the Bylaw only to the extent necessary to allow for a "Plantation II" sign to be located offsite, on Johnston Way, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 6.3.4 Off-Site Signs. The Applicant seeks relief from this section, which allows off-site signs only for seasonal agriculture and limits the size of signs. The Applicant seeks a waiver "to allow the sign to be located off-site in a location subject to the Building Commissioner's review and approval."

The Board grants this waiver only to the extent necessary to allow for a "Plantation II" sign to be located offsite, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 7.7.1. Parking. Originally Applicant sought relief from this section, which provides that no parking spaces may be located within 30 feet of the front lot line and within 10 feet of side or rear lot lines.

The Board granted this waiver. With respect to the lot line(s) shared with Plantation I property, the parking spaces shall be located no closer than eight (8) feet to the lot lines.

With the proposed reconfiguration of the Project Lot, this waiver is no longer necessary, as Plantation I and Plantation II are on a combined Project Lot in single ownership by the Applicant. The Applicant no longer seeks this relief or determination from the Board.

Zoning Bylaw Section 7.7.2. Access Driveways. Applicant seeks relief from this section which requires, among other things, an access driveway of 24 feet in width, to allow for Johnston Way, widened to between 18 and 22 feet.

The Board grants this waiver, provided that the width shall be 20 feet, noting that a width of 20 feet has been deemed adequate by the Fire Chief.

Zoning Bylaw Section 7.7.5. Interior Area Landscaping Requirements. The Applicant seeks relief from this section which requires a minimum of 10% of interior area to be planted as landscaped islands, to allow parking areas to be built as designed and shown on plan.

The Board grants this waiver.

Zoning Bylaw Section 8.9.2.1. Inclusion of Affordable Housing. The Applicant requests relief from this section, which requires among other things a special permit from the Planning Board for development or division of land resulting in creation of six or more units

The Board grants this waiver.

Zoning Bylaw Section 9.3.3.5. Site Plan Approval - establishment of area for vehicle parking, loading storage or vehicular access. The Applicant seeks waiver of this section to allow for parking and vehicle access areas to be built as designed and shown on the Plans without site plan approval.

The Board grants this waiver, to the extent the Bylaw would require a separate site plan review and approval process. Preliminary site plans have been reviewed by the Board and its consultants, and the final Site Plans must be reviewed and approved by the Board's consultant or the Planning Department prior to site disturbance.

Other regulations

Subdivision Control regulations

1) A waiver is sought from the ZBA with respect to the fees listed in the Subdivision Control Regulations in connection with the Project.

The Board grants this waiver.

2) A waiver is sought from the requirement of Section ~~7.4.15~~ of the Subdivision Control Regulations regarding performance guarantees. Developer proposes to provide a ~~guarantee~~guaranty with respect to construction-related damage of public roads adjacent to the Site.

The Board denies this waiver. The applicant shall provide a performance ~~guarantee~~guaranty in accordance with Section 5 for the Subdivision Rules and Regulations, such as a Restrictive Covenant, proper bond, deposit of money or negotiable securities, or funds retained by a lender.

3) A waiver is sought from the administrative requirements of Section 10.4, Mandatory Notice Prior to Commencement of Construction Work, Section 10.5, Inspections, and Section 10.8, Completion within Eight Years.

The Board denies waivers of Sections 10.4 and 10.5 of the Subdivision Rules and Regulations. The Board grants a waiver from Section 10.8 of the Subdivision Rules and Regulations.

Board of Health

Leaching Area Requirement Regulation.

The Applicant requests that the ZBA "confirm [the Applicant's] understanding or make the determination that the Board of Health's Leaching Area Regulation, which requires sewage disposal system leaching areas to have an effective square footage to handle 150% of the estimated design flow (as defined by Title 5) only applies to Title 5 sewage disposal systems and is inapplicable to the Project which will be installing a [wastewater] discharge facility to be permitted by the State Department of Environmental Protection."

The Board finds that the referenced regulation is inapplicable to the Project, provided that a wastewater ~~disposal~~discharge permit is issued.

General Bylaws

Acceptance and Repairs of Private Roads, Section 1.

The Applicant requests a waiver of this provision, specifically, that "with respect to Johnston Way and the access driveway, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway are not private roads or ways subject to Article 5 of the General Bylaws. If the ZBA determines that Johnston Way and the access driveway are private roads or ways subject to Article 5 of the General Bylaws, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway, although not meeting all of the requirements of Article 5, are of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon

and served thereby and accordingly waive strict compliance with Article 5 of the General Bylaws to construct the Project as shown on the Plans:."

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. To the extent that Johnston Way and the access driveway do not conform to the requirements of Article 5 of the General Bylaws, relief is granted, only upon compliance with the following conditions:

- 1) The owners of Plantation I and II shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.
- 2) There shall be no site disturbance until a restriction or covenant to run with the land has been approved by the Planning Department in a form satisfactory to assure compliance with this provision and a copy of the document received by the Building Inspector.
- 3) The above-described restriction or covenant shall include a provision that the way shall not be presented to Town Meeting for acceptance as a public way.
- 4) As proposed, the road shall not service any further developments.

Wetlands Bylaw

Section 5.4(a) General Performance Standards Applying to Any Area

The Applicant requests a waiver from this provision, stating that "[w]ith respect to the proposed water line that will cross a wetland area on the Neighboring [Plantation I] lot, the Developer seeks a temporary waiver from the ZBA from the requirement that an undisturbed buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet only in the event it proves infeasible to install the water line without disturbing said buffer.

~~As was discussed at~~ At the time of the hearing for the Remand Decision, the Applicant ~~has had~~ not yet prepared plans indicating where ~~this~~ the proposed water line would be installed, nor ~~has had~~ it established the existing conditions that would determine what methods would be used for such installation. Lacking this essential information, the Board ~~has had~~ no basis on which to grant a waiver. The waiver ~~is~~ was denied, without prejudice for the Applicant to return to the Board to request a modification of the Permit based on such information as would enable the Board to make such determination.

Other

~~—The Board acknowledges and agrees that pursuant to the relief granted in the Plantation I and II decisions and waivers, the Plantation I project will not be in violation of this Decision by~~

~~virtue of any violation of the Zoning Bylaw or Plantation II Decision, with respect to the Plantation II project.~~

In connection with the Modification Application, the Applicant submitted to the Board the plans indicating where the proposed water line will be installed together with the Order of Conditions issued by the Stow Conservation Commission, as amended. Because there continues to be uncertainty about the feasibility and cost of the proposed directional drilling which will not be resolved until drilling commences, the Applicant has renewed the request for a temporary waiver from the ZBA from the requirement that an undisturbed buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet only in the event it proves infeasible or uneconomic to install the water line without disturbing said buffer.

The Board [grants/denies] this waiver.

Document comparison by Workshare Compare on Monday, November 14, 2022
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Input:	
Document 1 ID	file:///C:/Users/gcloutier/AppData/Local/Temp/Workshare/tmpC293/KP-#723976-v1-STOW_bhc_final_Plantation_I_Waivers.docx
Description	KP-#723976-v1-STOW_bhc_final_Plantation_I_Waivers
Document 2 ID	iManage://imanager.kleinhornig.com/KHDOCS/590660/6
Description	#590660v6<imanager.kleinhornig.com> - SEHC Johnston Way 2022 Combined and Amended 40B Decision after Remand (Comprehensive Permit) List of Waivers Appendix B
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
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Statistics:	
	Count
Insertions	106
Deletions	21
Moved from	0
Moved to	0
Style changes	0
Format changes	0

Total changes	127
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COMBINED AND REVISED PLANTATION I AND II DECISION
REVISED APPENDIX B: DECISION ON WAIVERS

The Board GRANTS and DENIES the requested waivers as follows:

Zoning Bylaw

Zoning Bylaw Section 4.1.1 This provision prohibits construction or use of land or building in violation of Zoning Bylaw or any Town Bylaw.

The Board grants this waiver in part, only as specifically provided below.

Zoning Bylaw Section 4.1.2. This provision prohibits the construction of more than one building on a lot.

The Board grants this waiver with respect to construction of the Project building.

Zoning Bylaw Section 4.3.1 Lot area

The Board grants this waiver.

Zoning Bylaw Section 4.4 (Table of Dimensional Requirements).

Project Lot

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>	<u>Waiver Granted</u>
<u>Minimum Lot Area</u>	<u>65,340 sq. ft.</u>	<u>163,684 sq.ft.</u>	<u>*</u>
	<u>per unit x 38</u>		
<u>Minimum Frontage</u>	<u>200 ft.</u>	<u>75 ft.</u>	<u>125 ft.</u>
<u>Minimum front setback (to House)</u>	<u>30 ft.</u>	<u>29.1 ft.</u>	<u>.9 ft.</u>
<u>Minimum side setback (to House; west)</u>	<u>25 ft.</u>	<u>2.1 ft.</u>	<u>22.9 ft.</u>
<u>Minimum side setback (to House; east)</u>	<u>no relief required</u>		
<u>Minimum rear setback</u>	<u>40</u>	<u>*</u>	<u>*</u>
<u>Minimum front setback (Project Building)</u>	<u>from Great Road</u>	<u>no relief required</u>	

~~Minimum rear setback: 40 * *~~
~~(Project Building)~~

~~Minimum side setback 25 ft. 15 ft. 10 ft.~~
~~(Project Building, west)~~

~~Minimum side setback no relief required~~
~~(Project Building, east)~~

~~Minimum open space 10% 33.4% none requested~~

~~Maximum Height 35 35 none requested~~

~~Minimum side setback:~~
~~Control Building 25 6.5 18.5~~

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>	<u>Waiver Granted</u>
<u>Minimum Lot Area</u>	<u>65,340 sq. ft.</u> <u>per unit x 38</u>	<u>882,750 SF</u>	<u>*</u>
<u>Minimum Frontage</u>	<u>200 ft.</u>	<u>75 ft.</u>	<u>125 ft.</u>
<u>Minimum front setback</u> <u>(Project Building)</u>	<u>30 ft</u>	<u>629.63 ft.</u>	<u>None required</u>
<u>Minimum rear setback</u>	<u>40 ft</u>	<u>224 ft to closest building</u> <u>(Building C)</u>	<u>None required</u>
<u>Minimum side setback</u>	<u>25 ft.</u>	<u>49.6 ft. to closest building</u> <u>(Building A)</u>	<u>None Required</u>
<u>Minimum open space</u>	<u>10%</u>	<u>85%</u>	<u>None Required</u>
<u>Maximum Height</u>	<u>35</u>	<u>35</u>	<u>None Required</u>

*The Board waives these requirements as inapplicable to the project.

Zoning Bylaw Section 7.3.3. Applicant requests relief from the minimum number of parking spaces per unit/square foot, and requests approval for 47 spaces for the Plantation II development and approval to increase the parking for the Plantation I development from 45 spaces to 52 spaces.

The Board finds 47 spaces for Plantation II to be sufficient for the uses proposed and grants relief from the Bylaw requirement of two spaces per dwelling unit and approves the increase of spaces for Plantation I from 45 spaces to 52 spaces.

Zoning Bylaw Section 3.2 Applicant requests relief from this section as to Plantation II (with continuing relief from the original Plantation I decision applying to Plantation I), which describes purpose of District as intended for typical rural, single family residential and noncommercial uses, to allow the ~~single-family house~~, multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

Zoning Bylaw Section 3.2.1. Applicant requests relief from this section as to Plantation II (with continuing relief from the original Plantation I decision applying to Plantation I), which defines permitted Residential District Uses, to allow ~~the single-family house~~, multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

Zoning Bylaw Section 3.8.1.3. Noise. Applicant requests relief from this section, which limits noise generated on any lot. Applicant requests relief “” to the extent that it is more restricted than applicable state requirements.

The Board denies this waiver. In the event that the development is not in conformance with Section 3.8.1.3 of the Zoning Bylaw, the Applicant or owner shall provide noise abatement options for the Building Inspector's approval. Approval of such noise abatement options by the Building Inspector shall constitute compliance with this Bylaw section and this Permit.

Zoning Bylaw Section 3.8.1.10. Erosion Control. Applicant requests, as relief, a waiver from the requirement to obtain a special permit from the Planning Board regarding the erosion control measures regarding the total area of site disturbance of approximately ~~111,950~~22,190 square feet with respect to the Plantation I component, 138,350 square feet with respect to the Plantation II component and an additional approximately 39,000 square feet which was already disturbed on the Premises and easement area in connection with the roadway and landing in order to conduct drilling and testing for the new wells, and the clearing and regrading of ~~approximately 111,950~~the same approximate square ~~feet~~footage.

The Board grants a waiver only from the requirement to obtain a special permit from the Planning Board. The Board denies any additional waiver or relief. The project must comply with all other requirements of the Zoning Bylaw with respect to erosion control.

Zoning Bylaw Section 3.8.1.10.7. Applicant requests an exception from the requirement that a copy of the ~~SPPP~~[Stormwater Prevention Plan](#) and Notice of Intent filed with EPA to be submitted to the Planning Board.

The Board grants this waiver with respect to filing [these items](#) with the Planning Board. Copies of the relevant documents shall be provided to the Planning Department.

~~Zoning Bylaw Section 3.10: Table of Principal Uses. Applicant requests relief from the requirements of this Table, which require a special permit for multi-family use, and do not permit a 37-unit multi-family dwelling and a single family dwelling unit to be located on the same lot in residential districts.~~

The Board grants this waiver.

Zoning Bylaw Section 4.3.2.4. Lot Width. ~~The~~[Originally the](#) Applicant ~~seeks~~[sought](#) relief from this requirement with respect to ~~the Project parcel~~[Parcels A and A1](#). [The Board granted this waiver.](#)

~~The Board grants this waiver~~[With the proposed reconfiguration of the Project Lot, this waiver is no longer necessary. The Applicant no longer seeks this relief from the Board.](#)

Zoning Bylaw Section 4.3.2.5. Lot Shape. ~~Originally, the~~ Applicant ~~seeks~~[sought](#) relief from this requirement, which prohibits the laying out of a lot having an index of regularity below 0.4, with respect to the combined ~~Project parcel~~[Lot 1 and Parcels A and A1](#).

The Board ~~grants~~[granted](#) this waiver.

~~Zoning Bylaw Sections 4.3.1.3, 4.3.2.6, 4.3.2.7 and 4.4. Front and Rear Yards. Applicant seeks relief from these requirements, as needed, to allow for the relative locations of the structures.~~

~~The Board waives the requirements of Sections 4.3.1.3, 4.3.2.6 and 4.4 to the extent needed to permit the house to be located within the "Front Yard" of the elderly housing development, as otherwise subject to the Zoning Bylaw and this Decision. Likewise, the Board waives the requirements of Sections 4.3.1.3, 4.3.2.7 and 4.4 to the extent needed to permit the elderly housing development to be located within the "Rear Yard" of the house, as otherwise subject to the Zoning Bylaw and this Decision.~~

[With the proposed reconfiguration of the Project Lot, the index of regularity for the Project Lot is 0.41, therefore this waiver is no longer necessary. The Applicant no longer seeks this relief from the Board.](#)

[Zoning bylaw Section 4.3.2.6. Front Yards. Applicant originally sought relief from this requirement, which specifies means of measuring distance from buildings to lot frontage. Applicant originally sought "determination from the ZBA that the front lot line \[of Parcel A and](#)

A1] consists of the three segments running along the northern edge of Parcel A towards which the front entrance to the Elderly Housing is oriented."

With the proposed reconfiguration of the Project Lot, this determination is no longer necessary, as the lot frontage for the combined Project Lot is the 75 feet along Great Road. The Applicant no longer seeks this relief or determination from the Board.

Zoning Bylaw Sections 5.2.1.1.2 and 5.2.2.3. Water Resource Protection District. Applicant requests relief from this section, which prohibits uses generating onsite sewage disposal exceeding 110 gallons per day per 10,000 square feet of lot area.

The significance of this Bylaw is discussed in Section VII of the decision. While the Project's sewage disposal area for the wastewater treatment facility intended to serve Plantation I and Plantation II is located outside the WRPD boundary, the ~~Project building itself~~ Plantation I and proposed Plantation II buildings, themselves, and thus the "use," ~~lies~~ is within the WRPD boundary. Interpreting the Bylaw conservatively, which the Board believes it must, the Board finds this section of the Bylaw applicable to the Project. Based on the advice of its ~~advice of~~ consultant, the Board finds that to the extent a waiver of these Bylaw provisions is necessary, such provisions may be waived consistent with health and safety.

The Board grants this waiver.

Zoning Bylaw Section 5.2.1.1.8. Water Resource Protection District. ~~The~~ Originally, the Applicant ~~seeks~~ sought relief from this section, which prohibits uses with impervious surfaces of greater than 10% of lot area, or 5000 square feet, whichever is greater. ~~The~~ as to the Plantation II development. Originally the Plantation II Project parcel ~~will render~~ would have rendered impervious 46,711 square feet out of 163,684 square feet (28.5%).

The Board's consultant found the above to be satisfactory for the sites, notwithstanding the Bylaw limitations.

The Board ~~grants~~ granted this waiver.

In connection with the Modification Application, the Applicant seeks relief from this section, as to the combined Plantation I and II development. The Project parcel will render impervious 111,714 square feet out of 882,750 square feet (12.65%). Detailed calculations for the combined Project are as follows:

Existing impervious surface area is 52,906 square feet.

Proposed additional impervious surface area is 58,808 square feet.

Total impervious surface area proposed is 111,714 square feet.

Percentage of existing impervious surface area is 5.99%.

Percentage of proposed additional impervious surface area is 6.66%.

Percentage of total impervious surface area proposed is 12.65%.

Based on the earlier finding of the Board's consultant and the fact that the percentage of impervious surface is reduced, the Board grants this waiver.

Zoning Bylaw Section 6.2.5. Joint Responsibility of Lot owners sharing common drive. The Applicant seeks relief from this provision, which requires owners of lots bordering common drive to have joint and several responsibility for maintenance, so as to allow the responsibility for maintenance of Johnston Way to be shared "by owners of Parcel A and A1 and the Neighboring lot only" (that is, by whomever ultimately owns Plantation I and Plantation II), now anticipated to be the Applicant.

The Board grants this waiver.

Zoning Bylaw Section 6.2.6. Applicant seeks relief from this section which requires that an Erosion Control and Sedimentation Plan, in accordance with Planning Board Rules and Regulations governing the same, be submitted to and approved by the Planning Board.

The Board grants this waiver. The Erosion Control and Sedimentation Plan shall be submitted to the Planning Department.

Zoning Bylaw Section 6.2.7. The Applicant seeks relief from this section, which provides that "as part of an approved subdivision or special permit granted by the Planning Board, the number of lots served by a common drive may be increased to five."

The Board grants this waiver, to the extent the lots served are those depicted in the approved plans. No additional lots or units may be served.

Zoning Bylaw Section 6.3. Signs. The Applicant seeks a determination from the ZBA that Section 6.3. is waived in its entirety to permit installation of a sign, subject to the Building Commissioner's reasonable review and approval."

The Board denies this request for waiver of the Bylaw Section in its entirety. The Board waives the Bylaw only to the extent necessary to allow for a "Plantation II" sign to be located offsite, on Johnston Way, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 6.3.4 Off-Site Signs. The Applicant seeks relief from this section, which allows off-site signs only for seasonal agriculture and limits the size of signs. The Applicant seeks a waiver "to allow the sign to be located off-site in a location subject to the Building Commissioner's review and approval."

The Board grants this waiver only to the extent necessary to allow for a "Plantation II" sign to be located offsite, ~~on Johnston Way~~, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 7.7.1. Parking. Originally Applicant ~~seeks~~sought relief from this section, which provides that no parking spaces may be located within 30 feet of the front lot line and within 10 feet of side or rear lot lines.

The Board ~~grants~~granted this waiver. With respect to the lot line(s) shared with Plantation I property, the parking spaces shall be located no closer than eight (8) feet to the lot lines. ~~The project lot line with the U11 Parcel 11 property is considered a side lot line for~~

With the proposed reconfiguration of the Project Lot, this waiver is no longer necessary, as Plantation I and Plantation II are on a combined Project Lot in single ownership by the project lot Applicant. ~~The distance from the U11 Parcel 11 lot line to the parking area conforms with the 10 foot requirement and shall in no case be less than 19 feet~~Applicant no longer seeks this relief or determination from the Board.

Zoning Bylaw Section 7.7.2. Access Driveways. Applicant seeks relief from this section which requires, among other things, an access driveway of 24 feet in width, to allow for Johnston Way, widened to between 18 and 22 feet.

The Board grants this waiver, provided that the width shall be 20 feet, noting that a width of 20 feet has been deemed adequate by the Fire Chief.

Zoning Bylaw Section 7.7.5. Interior Area Landscaping Requirements. The Applicant seeks relief from this section which requires a minimum of 10% of interior area to be planted as landscaped islands, to allow parking areas to be built as designed and shown on plan.

The Board grants this waiver.

Zoning Bylaw Section 8.9.2.1. Inclusion of Affordable Housing. The Applicant requests relief from this section, which requires among other things a special permit from the Planning Board for development or division of land resulting in creation of six or more units

The Board grants this waiver.

Zoning Bylaw Section 9.3.3.5. Site Plan Approval - establishment of area for vehicle parking, loading storage or vehicular access. The Applicant seeks waiver of this section to allow for parking and vehicle access areas to be built as designed and shown on the Plans without site plan approval.

The Board grants this waiver, to the extent the Bylaw would require a separate site plan review and approval process. Preliminary site plans have been reviewed by the Board and its consultants, and the final Site Plans must be reviewed and approved by the Board's consultant or the Planning Department prior to site disturbance.

Other regulations

Subdivision Control regulations

1) A waiver is sought from the ZBA with respect to the fees listed in the Subdivision Control Regulations in connection with the Project.

The Board grants this waiver.

2) A waiver is sought from the requirement of Section 5 of the Subdivision Control Regulations regarding performance guarantees. Developer proposes to provide a ~~guarantee~~[guaranty](#) with respect to construction-related damage of public roads adjacent to the Site.

The Board denies this waiver. The applicant shall provide a performance ~~guarantee~~[guaranty](#) in accordance with Section 5 for the Subdivision Rules and Regulations, such as a Restrictive Covenant, proper bond, deposit of money or negotiable securities, or funds retained by a lender.

3) A waiver is sought from the administrative requirements of Section 10.4, Mandatory Notice Prior to Commencement of Construction Work, Section 10.5, Inspections, and Section 10.8, Completion within Eight Years.

The Board denies waivers of Sections 10.4 and 10.5 of the Subdivision Rules and Regulations. The Board grants a waiver from Section 10.8 of the Subdivision Rules and Regulations.

Board of Health

Leaching Area Requirement Regulation.

The Applicant requests that the ZBA "confirm [the Applicant's] understanding or make the determination that the Board of Health's Leaching Area Regulation, which requires sewage disposal system leaching areas to have an effective square footage to handle 150% of the estimated design flow (as defined by Title 5) only applies to Title 5 sewage disposal systems and is inapplicable to the Project which will be installing a [wastewater] discharge facility to be permitted by the State Department of Environmental Protection."

The Board finds that the referenced regulation is inapplicable to the Project, provided that a wastewater discharge permit is issued.

General Bylaws

Acceptance and Repairs of Private Roads, Section 1.

The Applicant requests a waiver of this provision, specifically, that "with respect to Johnston Way and the access driveway, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway are not private roads or ways subject to Article 5 of the General Bylaws. If the ZBA determines that Johnston Way and the access driveway are private roads or ways subject to Article 5 of the General Bylaws, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway, although not meeting all of the

requirements of Article 5, are of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon and served thereby and accordingly waive strict compliance with Article 5 of the General Bylaws to construct the Project as shown on the Plans:."

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. To the extent that Johnston Way and the access driveway do not conform to the requirements of Article 5 of the General Bylaws, relief is granted, only upon compliance with the following conditions:

- 1) The owners of Plantation I and II shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.
- 2) There shall be no site disturbance until a restriction or covenant to run with the land has been approved by the Planning Department in a form satisfactory to assure compliance with this provision and a copy of the document received by the Building Inspector.
- 3) The above-described restriction or covenant shall include a provision that the way shall not be presented to Town Meeting for acceptance as a public way.
- 4) As proposed, the road shall not service any further developments.

Wetlands Bylaw

Section 5.4(a) General Performance Standards Applying to Any Area

The Applicant requests a waiver from this provision, stating that "[w]ith respect to the proposed water line that will cross a wetland area on the Neighboring [Plantation I] lot, the Developer seeks a temporary waiver from the ZBA from the requirement that an undisturbed buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet only in the event it proves infeasible to install the water line without disturbing said buffer.

~~As was discussed at~~ At the time of the hearing for the Remand Decision, the Applicant ~~has had~~ not yet prepared plans indicating where ~~this~~ the proposed water line would be installed, nor ~~has had~~ it established the existing conditions that would determine what methods would be used for such installation. Lacking this essential information, the Board ~~has had~~ no basis on which to grant a waiver. The waiver ~~is~~ was denied, without prejudice for the Applicant to return to the Board to request a modification of the Permit based on such information as would enable the Board to make such determination.

Other

~~1. The Board acknowledges and agrees that pursuant to the relief granted in the Plantation I and II decisions and waivers, the Plantation II project will not be in violation of this Decision by virtue of any violation of the Zoning Bylaw or Plantation I Decision, with respect to the Plantation I project.~~

~~Furthermore, the Board acknowledges and agrees that, in the event the applicant submits the Plantation II project to a condominium regime and the existing house is sold as a separate condo unit to a party unrelated to the owner of the elderly housing unit, then pursuant to the relief granted in the Plantation I and II decisions and waivers, the house unit will not be in violation of this Decision by virtue of any violation of the Zoning Bylaw or Plantation II Decision, with respect to the elderly housing unit and, similarly, the elderly housing unit shall not be in violation of this Decision by virtue of any violation of the Zoning Bylaw or Plantation II Decision, with respect to the house unit.~~

~~2. The Developer seeks express acknowledgement of the ZBA that the Applicant intends to build wells and associated outbuildings on Parcel B-1, as contemplated in the Developer's Application on the Plans, pursuant to all relevant Massachusetts Department of Environmental Protection requirements and approvals.~~

In connection with the Modification Application, the Applicant submitted to the Board the plans indicating where the proposed water line will be installed together with the Order of Conditions issued by the Stow Conservation Commission, as amended. Because there continues to be uncertainty about the feasibility and cost of the proposed directional drilling which will not be resolved until drilling commences, the Applicant has renewed the request for a temporary waiver from the ZBA from the requirement that an undisturbed buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet only in the event it proves infeasible or uneconomic to install the water line without disturbing said buffer.

~~The Board declines to make such declaration. The uses for which the Board has granted approval are depicted in the Plans and described in the permit Decision~~[grants/denies] this waiver.

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Document 1 ID	file:///C:/Users/gcloutier/AppData/Local/Temp/Workshare/tmp692E/KP-#723974-v1-STOW_bhc_final_Plantation_II_Waivers.docx
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Document 2 ID	iManage://imanager.kleinhornig.com/KHDOCS/590660/6
Description	#590660v6<imanager.kleinhornig.com> - SEHC Johnston Way 2022 Combined and Amended 40B Decision after Remand (Comprehensive Permit) List of Waivers Appendix B
Rendering set	Standard

Legend:	
Insertion	
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	Count
Insertions	100
Deletions	67
Moved from	0
Moved to	0
Style changes	0
Format changes	0

Total changes	167
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COMBINED AND REVISED PLANTATION I AND II DECISION

REVISED APPENDIX C

Additional Plan Changes

1. Historically the Board required that all properties being developed shall be identified and shown on the Existing Conditions Plan. With the Modification Application, the Applicant has submitted an updated Existing Conditions Plan with this information. This condition is considered satisfied.
2. Historically the Board required that the following information shall be shown or referenced as applicable on the Record Plan:
 - a. Metes and bounds for U11-10 Lot I, Parcel A, Parcel A-1 and Parcel B-2 shall be shown on the plan;
 - b. Deeds for parcels U11-13-1 and R22-A-B shall be referenced on the Plan.
 - c. All easements required for utility access from Great Road to the Plantation II development from the owners of U11-13-1 shall be shown on the Plan.

With the Modification Application, the Applicant has proposed a different reconfiguration such that all the property for Plantation I and Plantation II be combined into a single Project Lot in single ownership by the Applicant and that the House Lot be separated into a separate lot. In addition, the Applicant has added additional land to the project. Given that the Applicant proposes that the Project Lot will be in single ownership, there is no longer a need for any utility easements over U11-13-1.. The Applicant has addressed the requests above on the Record Plan as applicable to the reconfigured Project Lot and separate House Lot (although that is not the subject of this Decision). Given the inclusion of this additional information on the Record Plan, this condition is considered satisfied.

3. Historically the Board required that a note shall be added to indicate flush curbing around all handicapped accessible parking spaces. With the Modification Application, the Applicant has submitted an updated plan with this information. This condition is considered satisfied.
4. A detail for proposed project signage, in accordance with Section 6.3 of the Zoning Bylaw, shall be added to the Plan.
5. Historically the Board required that the format and location of all signage, including but not limited to Stop signs, No Parking signs, Handicapped Parking signs, Emergency Access, and pedestrian safety shall be shown on the plan with a corresponding detail. With the Modification Application, the Applicant has submitted an updated plan with this information. This condition is considered satisfied.
6. The air chiller, HVAC, and backup generator shall be procured with noise abating enclosures or shielded structures. Planning staff shall be provided cut sheets for the enclosures for each unit with the intent of reducing noise as much as feasible. If enclosures are not available, acoustical barriers shall be constructed around the units.
7. Signage indicating speed, pedestrian usage and a stop sign at the intersection Johnston Way and Great Road shall be added to the Site Plan. Historically the Board required that a center line stripe and

stop sign line shall be added to the Plan. With the Modification Application, the Applicant requested this requirement be waived due to the narrow width of the private drive. [The Board has agreed to waive the requirement for a center line stripe, but keep the requirement for a stop sign line].

8. Historically the Board required that a reference shall be added for the easement/agreement regarding the use of the proposed fire cistern, including how water will be supplied if it is unavailable during construction . Given that the Applicant proposes that the Project Lot will be in single ownership, there is no longer a need for any easement or agreement regarding the fire cistern. The requirement for an easement/agreement is waived. The Board still requires that the Stow Fire Department should be made aware of water availability on a regular basis in accordance with Stow Fire Department Policies.
9. Historically the Board required that the Erosion Control Plan shall be updated to provide detail on erosion and sedimentation control efforts for the pump house and well site's gravel access road on parcel R22-1 A-B. In connection with testing for the wells, the Applicant filed a Notice of Intent with the Planning Department and included the required information. The gravel access road is already installed. This condition is considered satisfied.

Additional Erosion Control Related Conditions

The Applicant shall provide a copy of the NPDES submission, Stormwater Pollution Prevention Plan (SWPPP), related reports and any plan modifications to the Planning Department. The site contractor shall maintain SWPPP reports as required through the NPDES permit process and provide them upon request to the Planning Department.

Historically, the Board required that prior to commencement of construction, the Plan shall be modified as set forth below. In connection with the Modification Application, the Applicant submitted and updated plan with all the required information. This condition (including all items 1-8 below) is considered satisfied.

1. The Plans shall include a note indicating compliance with NPDES reporting requirements.
2. Prior to the commencement of construction, the Plan shall be modified to include the following notes regarding overall compliance and management:
 - a. Contractors shall comply with the requirements of the Stormwater Pollution Prevention Plan, which is required to be filed prior to construction;
 - b. Erosion Control measures shall be installed and inspected prior to any site disturbance.
 - c. Areas not to be disturbed shall be clearly delineated through flagging, signage;
 - d. There shall be no storage of any kind of pesticides, chemicals, fuels, and other potentially toxic or hazardous materials on site;
 - e. No debris, waste, junk, or rubbish shall be burned or buried on site;
 - f. Stumps and other wood debris shall be disposed in accordance with the "Policy on Disposal of Wood Wastes" Published by the Executive Office of Energy and Environmental Affairs;

- g. The job superintendent shall be responsible for the installation and maintenance of all erosion and sediment control practices.
3. Prior to the commencement of construction, the Plan shall be modified to include the following notes regarding Maintenance and Performance Standards:
- a. Sand, dirt or debris which erodes from the site onto any public street or private property shall be cleaned up. Any silt or other debris that enters any existing drainage system, including catch basin pumps, pipes, lines, manholes and ditches shall be removed;
 - b. All erosion control and sedimentation control measures shall be inspected weekly and after each rainfall in excess of 0.25 inches, including specific checks of the following items:
 - i. Silt fence barriers shall be checked routinely for tears, deterioration or undermining;
 - ii. All seeded areas shall be checked to confirm that a good cover is maintained;
 - iii. All areas on site subject to erosion and sedimentation shall be inspected on a regular basis. All items specified on the plan shall be inspected to confirm they are functioning as designed and intended. It shall be the contractor's responsibility to maintain and repair all erosion controls.
 - iv. Drainage swales during construction shall be inspected monthly, and/or after rainfall events exceeding 0.25 inches for erosion, sediment accumulation, and leaf buildup. All eroded area shall be stabilized. Sediment shall be removed and leaf litter removed.
 - v. Dewatering of any excavations during construction shall be addressed on an individual basis as needed. If temporary dewatering is required on site, sediment basins shall be maintained during the dewatering operation.
 - vi. Any existing drainage structures down gradient of the site shall be inspected and cleaned if necessary prior to construction. Proof of such cleaning shall be provided to the Conservation Commission and the Planning Board. Existing structures shall be inspected monthly and after every rain event while the site is disturbed. Structures shall be cleaned as required.
 - vii. In advance of forecasted heavy rain events, temporary measures such as check dams, diversion trenches, doubled up erosion control downgradient of discharge point and unstable surfaces shall be utilized until the site is stabilized. Silt sacks installed in drainage structures shall be cleaned prior to the event. Contractor is responsible for maintaining erosion controls during extreme events which may require the contractor to perform onsite inspections and remedial actions during the storm event.
 - viii. Contractor shall maintain a stockpile of additional erosion control measures on-site throughout construction, including straw bales, wattles, silt fence, crushed stone, and stump grindings as appropriate.
4. Prior to the commencement of construction, the Plan shall be modified to include the following notes regarding Temporary Erosion Control Measures:

- a. Place silt fences according to the plan details. Sediment shall be removed once the volume reaches $\frac{1}{4}$ of the height of the silt fence or straw bale.
 - b. Place check dams in swales.
 - c. During dry periods provide means for mitigating dust.
 - d. If loam is placed outside of the normal growing season, silt fence or straw wattles shall be placed to prevent erosion of soil.
 - e. Stockpile locations shall be within the proposed limit of work. Piles left for 21 days or more shall be seeded or covered with plastic sheeting.
 - f. Waste disposal receptacles and trailers will be used for the disposal of construction debris, which will be removed from the site according to state, local and federal guidelines. Construction debris will include pavement, utility, earth and building materials that cannot be reused. The receptacles will be located on site and covered.
 - g. A combination of the use of-stump grindings, winter rye plantings, and erosion control mats, and dense mats of straw mulch with tackifier shall be used if the vegetation is not fully established by the onset of winter.
5. Prior to the commencement of construction, the Plan shall be modified to include the following notes regarding Permanent Stabilization Measures:
 - a. Slopes flatter than 3 to 1 shall be loamed a minimum of 6" and hydroseeded with mulch and tackifier. Slopes shall be monitored for signs of washout. Provide additional mulching or other acceptable slope protection as required until vegetation is established.
 - b. Slopes 3:1 or greater shall be restored with 6" of loam, hydroseeded with mulch and tackifier and staked down with erosion control blankets similar to North American green sc 150BN. Install in accordance with the manufacturer's instructions.
 - c. Any locations not stabilized before the end of the fall planting season shall be stabilized with mulch and then hydroseeded in the spring.
 6. The Applicant shall provide a sequence of construction for the purpose of providing the contractor with an expected order of operations and estimated time frame for completion of the various tasks.
 7. Prior to the commencement of construction, the Applicant shall provide the Planning Department with a construction sequence detailing the order of operations, including but not limited to initial clearing of the land, installation of erosion controls, installation of exclusionary construction fencing, stripping, grading, stockpiling and the order of construction of the various components of the plan.
 8. Prior to commencement of construction, the Plan shall be updated to reflect the construction sequence, including but not limited to showing the locations of all stockpile areas and equipment storage locations.